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UPDATING THE LAWS, GENERAL AND PERMANENT IN THEIR NATURE, RELATING TO OR IN FORCE OR FINALLY ADOPTED IN THE DISTRICT OF COLUMBIA (EXCEPT SUCH LAWS AS ARE OF APPLICATION IN THE DISTRICT OF COLUMBIA BY REASON OF BEING GENERAL AND PERMANENT LAWS OF THE UNITED STATES), AS OF APRIL 27, 1999, NOTES TO EMERGENCY LEGISLATION ADOPTED AS OF MARCH 31, 1999, REORGANIZATION PLANS NOT DISAPPROVED AS OF DECEMBER 31, 1998, AND NOTES TO DECISIONS REPORTED AS OF MARCH 1, 1999

VOLUME 4A

1995 REPLACEMENT

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TITLE 7. HIGHWAYS, STREETS, BRIDGES.

Chapter 1. Highway Plans.

§ 7-134. Federal-aid highway projects — Authority to provide payments and services.

Emergency act amendments. — For temporary establishment, on an emergency basis due to Congressional review, the District of Columbia Highway Trust Fund to comply with the requirement for the creation of a dedicated highway fund mandated by the D.C. Emergency Highway Relief Act, see § 2 of the Highway Trust Fund Establishment Congressional Review Emergency Act of 1997 (D.C. Act 12-47, March 31, 1997, 44 DCR 2103).

For temporary authority of the Mayor to issue rules and regulations necessary to carry out the purposes of the act, see § 3 of the Highway Trust Fund Establishment Congressional Review Emergency Act of 1997 (D.C. Act 12-47, March 31, 1997, 44 DCR 2103).

Establishment of Highway Trust Fund. — Section 2 of D.C. Law 11-116 provided for the establishment of the District of Columbia Highway Trust Fund to comply with the requirement for the creation of a dedicated highway fund mandated by § 7-134.2.

Section 5(b) of D.C. Law 11-116 provided that the act shall expire after 225 days of its having taken effect. D.C. Law 11-116 became effective May 3, 1996.

Appropriations authorized. — Public Law 104-194, 110 Stat. 2362, the District of Columbia Appropriations Act, 1997, provided for construction projects an increase of $46,923,000 (including an increase of $34,000,000 for the highway trust fund, reallocations and rescissions for a net rescission of $120,496,000 from local funds appropriated under this heading in prior fiscal years and an additional $133,419,000 in Federal funds), as authorized by §§ 43-1512 through 43-1519; §§ 43-1524, 43-1527 and 43-1654; and §§ 9-219 and 47-3404; including acquisition of sites, preparation of plans and specifications, conducting preliminary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: Provided, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: Provided further, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: Provided further, That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided by this appropriation title, shall expire on September 30, 1998, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1998: Provided further, That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

Federal-Aid Highway Memorandum of Agreement Council Chairman Emergency Resolution of 1996. — Pursuant to Resolution 11-374, effective June 4, 1996, Council directed, on an emergency basis, the Chairman, on behalf of the Council, to sign a memorandum of Agreement to Establish a Federal-Aid Highway Pilot Program at the Department of Public Works.

§ 7-134.1. District of Columbia emergency highway relief.

(a) *Temporary waiver of non-Federal share.* — Notwithstanding any other law, during fiscal years 1995 and 1996, the Federal share of the costs of an

eligible project shall be a percentage requested by the District of Columbia, but not to exceed 100% of the costs of the project.

(b) *Eligible projects.* — In this section, the term "eligible project" means a highway project in the District of Columbia:

(1) For which the United States:

(A) Is obligated to pay the Federal share of the costs of the project under Title 23, United States Code, on August 4, 1995; or

(B) Becomes obligated to pay the Federal share of the costs of the project under Title 23, United States Code, during the period beginning on August 4, 1995 and ending September 30, 1996;

(2) Which is:

(A) For a route proposed for inclusion on or designated as part of the National Highway System; or

(B) Of regional significance (as determined by the Secretary of Transportation); and

(3) With respect to which the District of Columbia certifies that sufficient funds are not available to pay the non-Federal share of the costs of the project. (Aug. 4, 1995, 109 Stat. 257, Pub. L. 104-21, § 2.)

§ 7-134.2. Dedicated highway fund and repayment of temporary waiver amounts.

(a) *Establishment of fund.* — Not later than December 31, 1995, the District of Columbia shall establish a dedicated highway fund to be comprised, at a minimum, of amounts equivalent to receipts from motor fuel taxes and, if necessary, motor vehicle taxes and fees collected by the District of Columbia to pay in accordance with this section the cost-sharing requirements established under Title 23, United States Code, and to repay the United States for increased Federal shares of eligible projects paid pursuant to § 7-134.1(a). The fund shall be separate from the general fund of the District of Columbia.

(b) *Payment of non-Federal share.* — For fiscal year 1997 and each fiscal year thereafter, amounts in the fund shall be sufficient to pay, at a minimum, the cost-sharing requirements established under Title 23, United States Code, for such fiscal year.

(c) *Repayment requirements* (1) *Fiscal year 1996.* — By September 30, 1996, the District of Columbia shall pay to the United States from amounts in the fund established under subsection (a) of this section, with respect to each project for which an increased Federal share is paid in fiscal year 1995 pursuant to § 7-134.1(a), an amount equal to 50% the difference between:

(A) The amount of the costs of the project paid by the United States in such fiscal year pursuant to § 7-134.1(a); and

(B) The amount of the costs of the project that would have been paid by the United States but for § 7-134.1(a).

(2) *Fiscal year 1997.* — By September 30, 1997, the District of Columbia shall pay to the United States from amounts in the fund established under subsection (a) of this section, with respect to each project for which an increased Federal share is paid in fiscal year 1995 pursuant to § 7-134.1(a) and with respect to each project for which an increased Federal share is paid in fiscal year 1996 pursuant to § 7-134.1(a), an amount equal to 50% of the difference between:

(A) The amount of the costs of the project paid in such fiscal year by the United States pursuant to § 7-134.1(a); and

(B) The amount of the costs of the project that would have been paid by the United States but for § 7-134.1(a).

(3) *Fiscal year 1998.* — By September 30, 1998, the District of Columbia shall pay to the United States from amounts in the fund established under subsection (a) of this section, with respect to each project for which an increased Federal share is paid in fiscal year 1996 pursuant to § 7-134.1(a), an amount equal to 50% of the difference between:

(A) The amount of the costs of the project paid in such fiscal year by the United States pursuant to § 7-134.1(a); and

(B) The amount of the costs of the project that would have been paid by the United States but for § 7-134.1(a).

(4) *Deposit of repaid funds.* — Repayments made under paragraphs (1), (2) and (3) of this subsection with respect to a project shall be:

(A) Deposited in the Highway Trust Fund established by section 9503 of the Internal Revenue Code of 1986; and

(B) Credited to the appropriate account of the District of Columbia for the category of the project.

(d) *Enforcement.* — If the District of Columbia does not meet any requirement established by subsection (a), (b), or (c) of this section and applicable in a fiscal year, the Secretary of Transportation shall not approve any highway project in the District of Columbia under Title 23, United States Code, until the requirement is met.

(e) *GAO audit.* — Not later than December 31, 1996, and each December 31 thereafter, the Comptroller General of the United States shall audit the financial condition and the operations of the fund established under this section and shall submit to Congress a report on the results of such audit and on the financial condition and the results of the operation of the fund during the preceding fiscal year and on the expected condition and operations of the fund during the next 5 fiscal years. (Aug. 4, 1995, 109 Stat. 257, Pub. L. 104-21, § 3; Apr. 9, 1997, D.C. Law 11-255, § 17(a), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made stylistic change in (c)(4).

Legislative history of Law 11-255. — Law 11-255, the "Second Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-905, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-519 and transmitted to both Houses of Congress for its review. D.C. Law 11-255 became effective on April 9, 1997.

§ 7-134.3. Additional requirements.

(a) *Expeditious processing and execution of contracts.* — The District of Columbia shall expeditiously process and execute contracts to implement the Federal-aid highway program in the District of Columbia.

(b) *Revolving fund account.* — The District of Columbia shall establish an independent revolving fund account for Federal-aid highway projects. The account shall be separate from the capital account of the Department of Public Works of the District of Columbia and shall be reserved for the prompt payment of contractors completing highway projects in the District of Columbia under Title 23, United States Code.

(c) *Highway project expertise and resources.* — The District of Columbia shall ensure that necessary expertise and resources are available for planning, design, and construction of Federal-aid highway projects in the District of Columbia.

(d) *Programmatic reforms.* — The Secretary of Transportation, in consultation with the District of Columbia Financial Responsibility and Management Assistance Authority established pursuant to § 47-391.1(a), may require administrative and programmatic reforms by the District of Columbia to ensure efficient management of the Federal-aid highway program in the District of Columbia.

(e) *GAO audit.* — The Comptroller General of the United States shall review implementation of the requirements of this section (including requirements imposed under subsection (d) of this section) and report to Congress on the results of such review not later than July 1, 1996. (Aug. 4, 1995, 109 Stat. 259, Pub. L. 104-21, § 4; Apr. 9, 1997, D.C. Law 11-255, § 17(b), 44 DCR 1271.)

Effect of amendments. — D.C. Law 11-255 validated a previously made technical correction in (d).

Legislative history of Law 11-255. — See note to § 7-134.2.

Establishment of Procedures and Amendment of Mayor's Orders to Expedite the Review, Award, and Execution of Federal-Aid Highway Project Contracts. — See Mayor's Order 96-130, August 20, 1996 (43 DCR 4887).

§ 7-134.4. District of Columbia Highway Trust Fund.

(a) There is established the District of Columbia Highway Trust Fund ("Fund").

(b) The monies in the Fund shall not be a part of, or lapse into, the General Fund of the District or any other fund of the District.

(c) The Mayor shall deposit into the Fund, on a monthly basis, an amount equivalent to all receipts from taxes, fees, civil fines and penalties collected by the District after September 30, 1995, pursuant to Chapter 23 of Title 47.

(d) All monies in the Fund shall be used first to comply with the requirements of § 7-134.2.

(e) Any excess monies remaining in the fund after the requirements of § 7-134.2 have been met may be used for the construction and maintenance of local rights-of-way and related structures and systems not eligible for federal aid. (Apr. 9, 1997, D.C. Law 11-184, § 102, 43 DCR 4265.)

Emergency act amendments. — For temporary addition of section, see § 2 of the Highway Trust Fund Establishment Emergency Act of 1995 (D.C. Act 11-169, December 8, 1995, 42 DCR 7069), § 2 of the Highway Trust Fund Establishment Congressional Review Emergency Act of 1996 (D.C. Act 11-223, March 7, 1996, 43 DCR 1418), and § 2 of the Highway Trust Fund Establishment Second Congressional Review Emergency Act of 1996 (D.C. Act 11-464, January 9, 1997, 44 DCR 620).

Section 3 of D.C. Act 11-169, § 3 of D.C. Act 11-223, and § 3 of D.C. Act 11-464 provided for the issuance by the Mayor of rules and regulations necessary to carry out the purposes of the act.

Section 4 of D.C. Act 11-464 provides for the application of the act.

Legislative history of Law 11-116. — Law 11-116, the "Highway Trust Fund Establishment Temporary Act of 1996," was introduced in Council and assigned Bill No. 11-512. The Bill was adopted on first and second readings on December 5, 1995, and February 6, 1996, respectively. Signed by the Mayor on February 20, 1996, it was assigned Act No. 11-218 and transmitted to both Houses of Congress for its review. D.C. Law became effective on May 3, 1996.

Legislative history of Law 11-184. — Law 11-184, the "Highway Trust Fund Establishment Act and the Water and Sewer Authority

Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-513, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on June 6, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-337 and transmitted to both Houses of Congress for its review. D.C. Law 11-184 became effective on April 9, 1997.

Mayor authorized to issue rules. — Section 103 of D.C. Law 11-184 provided that the Mayor may issue rules and regulations as the Mayor finds necessary to carry out the purposes of Title I of the act pursuant to Subchapter I of Chapter 15 of Title 1.

Short Title of Title I of Law 11-184. — Section 101 of D.C. Law 11-184 provided that Title I of the act may be cited as the Highway Trust Fund Establishment Act of 1996.

CHAPTER 2. STREETS.

Subchapter II. Make a Difference Selection Committee.

Subchapter I. Street Closings and Acquisitions.

Editor's notes. — Because of the enactment of subchapter II of this chapter by D.C. Law 12-98, the preexisting text of Chapter 2, including §§ 7-201 through 7-220, has been designated as subchapter I of the chapter.

Subchapter II. Make a Difference Selection Committee.

§ 7-231. Establishment of the Make a Difference Selection Committee.

(a) There is established in the District of Columbia the Make a Difference Selection Committee ("Committee") constituted for the purpose of selecting nominees for recognition as humanitarians working in the public interest.

(b) The Committee shall consist of 9 members, with 3 ex-officio members and 6 members appointed by the Mayor.

(c) Members of the Committee shall serve for as long as they continue to satisfy the qualifications for membership. The composition of the Committee shall be as follows:

(1) The Director of the District of Columbia Office of Planning, or his or her designee;

(2) The Director of the Department of Public Works, or his or her designee;

(3) The Chairperson of the Board of Directors or the President of the Make a Difference Foundation;

(4) Three members of the Board of Directors of the Make a Difference Foundation who reside or work in the District of Columbia; and

(5) Three residents of the District of Columbia of which 2 shall be Mayoral appointees and the remaining member shall be appointed by the Council.

(d) The Mayor shall choose a chairperson of the Committee, and the members of the Committee shall elect from their membership a vice-chairperson and other officers as deemed necessary.

(e) Members of the Committee shall serve without compensation and shall not be reimbursed for expenses incurred while carrying out their duties pursuant to this subchapter.

(f) The Mayor shall submit the names of a majority of the nominees of the Committee to the Council within 60 days April 30, 1998.

(g) Vacancies on the Committee shall be filled in the same manner as the original appointments were made.

(h) A majority of the Committee shall constitute a quorum for the purpose of conducting business. (Apr. 30, 1998, D.C. Law 12-98, § 2, 45 DCR 1519; _____, 1999, D.C. Law 12- (Act 12-622), § 4(g), 46 DCR 1355.)

Effect of amendments. — D.C. Law 12-(Act 12-622), in (b), deleted the former second and third sentences, and deleted "with the advice and consent of the Council" from the end of the remaining sentence.

Emergency act amendments. — For temporary amendment of section, see § 4(g) of the Confirmation Emergency Amendment Act of 1999 (D.C. Act 13-25, March 15, 1999, 46 DCR 2971).

Section 6 of D.C. Act 13-25 provides for the application of the act.

Legislative history of Law 12-98. — Law 12-98, the "Make a Difference Selection Committee Establishment Act of 1998," was introduced in Council and assigned Bill No. 12-90, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 4, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 26, 1998, it was assigned Act No. 12-272 and transmitted to both Houses of Congress for its review. D.C. Law 12-98 became effective on April 30, 1998.

Legislative history of Law 12-(D.C. Act 12-622). — Law 12-(D.C. Act 12-622), the "Confirmation Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-622 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-622) became effective on _____.

§ 7-232. Committee duties.

(a) The Committee shall accept nominations for honorees from the District of Columbia and any state or territory of the United States.

(b) The Committee shall select from the nominations received, persons to be recognized with commemorative markers in sidewalks designated in § 7-236. (Apr. 30, 1998, D.C. Law 12-98, § 3, 45 DCR 1519.)

Legislative history of Law 12-98. — See note to § 7-231.

§ 7-233. Selection criteria.

(a) No person shall be selected by the Commission to be honored unless that person meets the following criteria:

(1) The person's contribution must have been made in the public interest, must have materially improved American society, or the environment and must have had a positive effect on a significant number of people in the United States.

(2) The person must have been acting as a private citizen and not as an appointed or elected government official for the acts for which the person is to be recognized.

(3) The person must have undertaken the achievement for which the person is to be recognized outside of his or her normal work assignment, and not for profit.

(4) The person must have been born in the United States or naturalized as a United States citizen.

(b) No person shall be selected for recognition until a minimum of 5 years after the achievement for which the individual is being nominated has elapsed.

(c) The Committee shall not consider the race, color, religion, national origin, sex, or political affiliation of any nominee in making its decision on whether to honor an individual's accomplishments.

(d) There shall be no limit on the number of annual nominees that the Committee may consider for recognition. However, no more than 10 persons may be selected for recognition with a marker in any calendar year.

(e) A nominee must receive a two-thirds majority vote of the Committee members present and voting at a meeting of the Committee.

(f) Nominees approved by the Committee shall be submitted to the Mayor. The Mayor shall transmit the names of nominees by resolution to the Council for a 30-day period of review, excluding Saturdays, Sundays, legal holidays and days of Council recess. If the Council does not approve or disapprove the nominees, in whole or in part, by resolution within this 30-day review period, the nominees shall be deemed disapproved. (Apr. 30, 1998, D.C. Law 12-98, § 4, 45 DCR 1519.)

Legislative history of Law 12-98. — See note to § 7-231.

§ 7-234. Special trust fund.

(a) There is established a special trust fund to be known as the Make a Difference Trust Fund ("Fund") to receive all money from whatever source derived to carry out the purposes of this subchapter. The Fund shall be operated by the Committee in accordance with generally accepted accounting principles. At no time shall any amount credited to the Fund be transferred to, or lapse into, or be commingled with the General Fund of the District of Columbia, or any other funds or accounts of the District of Columbia.

(b) Monies in the fund may derive from any of the following sources:

(1) Private donations;

(2) Federal grants;

(3) Other funds received by the Committee; and

(4) Interest or investments earnings on monies deposited in the Fund

(c) An amount equal to 10% of the cost of each installed marker shall be held in a separate account earmarked for the perpetual maintenance and repair of the commemorative markers.

(d) The Committee shall maintain liability insurance in the amount of $1,000,000 for markers installed pursuant to this subchapter. The District shall be held harmless for any acts or omissions in the performance of its duties pursuant to the provisions of this subchapter. (Apr. 30, 1998, D.C. Law 12-98, § 5, 45 DCR 1519.)

Legislative history of Law 12-98. — See note to § 7-231.

§ 7-235. Marker design and installation.

(a) Markers recognizing individuals pursuant to this subchapter shall be made of granite or of another material approved by the Mayor.

(b) The markers shall be of consistent size, no larger than 4 feet by 4 feet and installed at approximately 50 foot intervals according to specifications of the Make a Difference Foundation and approved by the Department of Public Works.

(c) Markers shall be placed flush with the surface of the adjoining sidewalk and shall present no obstacle or danger to pedestrian traffic. The design shall comply with the requirements of 24 DCMR Chapter 11, Downtown Streetscape and shall be consistent with the Comprehensive Plan. (Apr. 30, 1998, D.C. Law 12-98, § 6, 45 DCR 1519.)

Legislative history of Law 12-98. — See note to § 7-231.

§ 7-236. Marker locations.

Commemorative markers constructed pursuant to this subchapter may be placed in, including, but not limited to, the following locations:

(1) The North and South sidewalks of G Street, N.W., between 15th Street and 11th Street, N.W.;

(2) The North and South sidewalks of F Street, N.W., between 15th Street and 11th Street, N.W.;

(3) The North sidewalks of E Street, N.W., between 14th Street and 11th Street, N.W. and the South sidewalks of E Street, N.W., between 13th Street and 11th Street, N.W.;

(4) The East sidewalks of 15th Street, N.W., between Pennsylvania Avenue, N.W. and G Street, N.W.;

(5) The East and West sidewalks of 14th Street, N.W., between Pennsylvania Avenue, N.W., and G Street, N.W.;

(6) The East sidewalks of 13th Street, N.W., between Pennsylvania Avenue, N.W. and E Street, N.W. and the East and West sidewalks of 13th Street, N.W., between E Street, N.W., and G Street, N.W.;

(7) The East and West sidewalks of 12th Street, N.W., between Pennsylvania Avenue, N.W., and G Street, N.W.; and

(8) The East and West sidewalks of 11th Street, N.W., between Pennsylvania Avenue, N.W., and G Street, N.W. (Apr. 30, 1998, D.C. Law 12-98, § 7, 45 DCR 1519.)

Legislative history of Law 12-98. — See note to § 7-231.

§ 7-237. Make a Difference Foundation.

(a) The Make a Difference Foundation ("Foundation") is a non-profit corporation founded in 1993, incorporated in the Commonwealth of Virginia. The purpose of the Make a Difference Foundation is to promote and encourage the practice of humanitarianism and public interest advocacy by recognizing the achievements of private citizens who work in the public interest.

(b) Notwithstanding the provisions of subchapter IV of Chapter 4 of Title 7, the Make a Difference Foundation is authorized to install markers of granite or some other suitable material approved by the Mayor in the sidewalks in the District of Columbia designated in § 7-236. The authority granted pursuant to this subsection is conditioned on the Make a Difference Foundation registering and maintaining registration as a foreign corporation in the District of Columbia.

(c) The Foundation shall pay all costs associated with constructing, installing, and maintaining the markers installed pursuant to this subchapter.

(d) Markers shall be inscribed with a profile likeness of the individual, a description of the individual's achievements, the date of the individual's birth (and death if then deceased), and may include a quote attributed to the individual.

(e) The Make a Difference Foundation shall have the exclusive right to install markers in sidewalks designated in § 7-236.

(f) Nothing in this subchapter shall be construed to limit the ability of the District of Columbia government to install other monuments within any public space in the District including the region in which the Make a Difference Foundation has the exclusive right to install sidewalk markers. (Apr. 30, 1998, D.C. Law 12-98, § 8, 45 DCR 1519.)

Legislative history of Law 12-98. — See note to § 7-231.

§ 7-238. Mayor to issue rules.

The Mayor, pursuant to subchapter I of Chapter 15 of Title 1, may issue rules to implement the provisions of this subchapter. (Apr. 30, 1998, D.C. Law 12-98, § 9, 45 DCR 1519.)

Legislative history of Law 12-98. — See note to § 7-231.

CHAPTER 4. STREET AND ALLEY CLOSING AND ACQUISITION PROCEDURES.

Subchapter I. Definitions.

§ 7-411. Definitions.

For purposes of this chapter the term:

* * * * *

(4) "Highway plan" means the plan of the permanent system of highways developed pursuant to § 7-107 et seq.

* * * * *

(Apr. 18, 1996, D.C. Law 11-110, § 18, 43 DCR 530.)

Effect of amendments. — D.C. Law 11-110 validated a previously made substitution of "§ 7-107" for "§ 7-108" in (4).

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Subchapter II. Street and Alley Closing Procedures.

§ 7-421. Authority of the Council.

The Mayor may close all or part of any street or alley which is determined by the Council to be unnecessary for street or alley purposes, upon approval of a proposed resolution submitted by the Mayor to the Council for its review. (Mar. 10, 1983, D.C. Law 4-201, § 201, 30 DCR 148; Apr. 29, 1998, D.C. Law 12-86, § 504(a), 45 DCR 1172.)

Effect of amendments. — D.C. Law 12-86 rewrote the section.

Emergency act amendments. — For temporary order to close public alleys in Square 51, see § 2 of the Closing of Public Alleys in Square 51, S.O. 98-145, Emergency Act of 1998 (D.C. Act 12-597, January 20, 1999, 45 DCR 1142).

Legislative history of Law 12-86. — Law 12-86, the "Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-458, which was referred to the Committee on Public Works and the Environment and the Committee on Consumer and Regulatory Affairs. The Bill was adopted on first and second readings on December 19, 1997, and January 6, 1998, respectively. Signed by the Mayor on January 28, 1998, it was assigned Act No. 12-256 and transmitted to both Houses of Congress for its review. D.C. Law 12-86 became effective on April 29, 1998.

Temporary closing of public alleys in Square 51. — Section 2(a) of D.C. Law 12-280 provides for the temporary closing of the public alleys in Square 51, as shown on the Surveyor's plat filed under S.O. 98-145, with title to the land to vest as shown on the Surveyor's plat. Section 6(b) of D.C. Law 12-280 provides that the act shall expire after 225 days of its having taken effect.

Closing of public alley in Square 371. — Section 2 of D.C. Law 12-267 provides that the Council of the District of Columbia found the public alley in Square 371, as shown on the Surveyor's plat filed under S.O. 96-202, unnecessary for alley purposes, and ordered it closed, with title to the land to revert as shown on the Surveyor's plan.

§ 7-426. Duties of applicant; Mayor to make available signs and prescribe format for written notice.

(a) At least 15 days and no more than 60 days prior to the date of any public hearing to consider an application to close all or part of a street or alley, the applicant shall:

(1) Give written notice of the date, time, and location of the public hearing to all of the owners of all the property on both sides of the block(s) of the street which abuts the block(s) of that street to be closed or which abuts that entire alley; and

(2) Post a sign which indicates the date, time, and location of the public hearing at each end of the block(s) of that street to be closed, or at each entrance from a street to any alley in the square.

(b) At least 15 days and no more than 6 months prior to final consideration by the Council of a proposed resolution to close all or part of a street or alley which has not been the subject of a public hearing, the applicant shall:

(1) Give written notice of the Council's intent to consider the proposed resolution to all of the owners of all the property on both sides of the block(s) of the street or which abuts that alley; and

(2) Post a sign which indicates the Council's intent to consider the proposed resolution at each end of the block(s) of that street to be closed, or at each entrance from a street to any alley in the square.

(c) The applicant shall certify to the Council that the notice required in subsection (a) or (b) of this section has been given. A post office receipt of proof of mailing of the notice to the property owner's last known address and a photograph of each posted sign shall be sufficient proof that the required notice was given.

(d) The Mayor shall make available the signs and shall prescribe by rule a format for the written notice to be given pursuant to this section. (Mar. 10, 1983, D.C. Law 4-201, § 206, 30 DCR 148; Apr. 30, 1988, D.C. Law 7-104, § 30, 35 DCR 147; Sept. 21, 1988, D.C. Law 7-144, § 3(b), 35 DCR 5405; Apr. 29, 1998, D.C. Law 12-86, § 504(b), 45 DCR 1172; Apr. 20, 1999, D.C. Law 12-264, § 20, 46 DCR 2118.)

Effect of amendments. — D.C. Law 12-86, in (b), substituted "resolution" for "legislation" throughout.

D.C. Law 12-264 validated a previously made technical correction in (b).

Legislative history of Law 12-86. — See note to § 7-421.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

§ 7-429. Approval subject to contingencies; relocation assistance.

* * * * *

(b)(1) If the closing of all or part of a street or alley is associated with the demolition, substantial rehabilitation, or discontinuance of an existing building and results in the displacement of existing retail tenants, then the applicant shall certify to the District, prior to the issuance of a building permit for the development facilitated by the alley closing, that the applicant has either:

(A) Offered each eligible retail tenant a preferential opportunity to return to the new or rehabilitated building upon completion; or

(B) Provided each eligible retail tenant a relocation payment, the amount of which shall be calculated by multiplying the assessed value of the existing building by the proportion of square footage within the building that was occupied by the retail tenant, but in no event shall this relocation payment be required to exceed $25,000.

(2) If the applicant offers the preferential opportunity to return referred to in subparagraph (1)(A) of this subsection and if the eligible retail tenant accepts the offer, then the applicant shall not be required to provide the eligible retail tenant with the relocation payment referred to in subparagraph (1)(B) of this subsection. If the applicant offers the preferential opportunity to return referred to in subparagraph (1)(A) of this subsection and if the eligible retail tenant declines or does not respond to the offer, then the applicant shall provide the eligible retail tenant with the relocation payment referred to in subparagraph (1)(B) of this subsection. If the applicant chooses not to offer the preferential opportunity to return referred to in subparagraph (1)(A) of this subsection, then the applicant shall provide the eligible retail tenant with the relocation payment referred to in subparagraph (1)(B) of this subsection.

* * * * *

(4) The relocation assistance required by this section referred to in paragraph (1) of this subsection shall be designed for the benefit of eligible retail tenants who are displaced by a development associated with a street or alley closing, and both the eligible retail tenants and the Corporation Counsel, on behalf of the District of Columbia, shall have the right to sue in the Superior Court of the District of Columbia to enforce the relocation assistance required by this section. A copy of the relocation assistance required by this section shall be sent by the applicant to all retail tenants who may be displaced by a development associated with the application, and the applicant shall use best efforts to notify retail tenants of the relocation assistance required by this section.

* * * * *

(f) An applicant who obtains a street or alley closing or a zoning density increase and who is required to construct or rehabilitate affordable housing pursuant to section 308b of the Comprehensive Plan (10 DCMR) shall not be issued a building permit for the applicant's commercial development until the applicant certifies to the District either that a building permit has been issued for the required amount of affordable housing, or that the applicant has contributed sufficient funds to a housing provider to construct or rehabilitate the required amount of affordable housing. (Mar. 10, 1983, D.C. Law 4-201, § 209, 30 DCR 148; Aug. 7, 1986, D.C. Law 6-133, § 2, 33 DCR 3625; Oct. 6, 1994, D.C. Law 10-193, § 3(c), 41 DCR 5536; Apr. 27, 1999, D.C. Law 12-275, § 4, 46 DCR 1441.)

Effect of amendments.

D.C. Law 12-275, in (b), rewrote (1), deleted "during the 3-month period" following "accepts the offer" in the first sentence and following "respond to the offer" in the second sentence of (2), and substituted "relocation assistance required by this section" for "covenant" twice in the first sentence and for "executed covenant" in the second sentence of (4); and rewrote (f).

Legislative history of Law 12-275. — Law 12-275, the "Comprehensive Plan Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-99. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-609 and transmitted to both Houses of Congress for its review. D.C. Law 12-275 became effective on April 27, 1999.

Effective date of District elements of the Comprehensive Plan for the National Capital. — Section 7(b) of D.C. Law 12-275 provided that no District element of the Comprehensive Plan for the National Capital shall

take effect until it has been reviewed by the National Capital Planning Commission as provided in § 1-2002(a) and § 1-244.

§ 7-435. Mayor to issue procedures for review by agencies and public utilities.

Within 6 months of April 29, 1998, the Mayor shall issue procedures to require that all administrative reviews by affected agencies and by the public utilities of all applications to close all or part of a street or public alley, including agency and utility procedures both prior to Council review and after enactment of the resolution, will be completed within a total period of no greater than 180 days from the date of application. This 180 day period shall not include the days that the resolution is pending in the Council. (Mar. 10, 1983, D.C. Law 4-201, § 215, 30 DCR 148; Apr. 29, 1998, D.C. Law 12-86, § 504(c), 45 DCR 1172.)

Effect of amendments. — D.C. Law 12-86 rewrote the section.

Legislative history of Law 12-86. — See note to § 7-421.

Subchapter III. New Streets or Alleys.

§ 7-442. Methods of acquisition.

Emergency act amendments. — For temporary acceptance of dedication of land located between Eckington Place, N.E., and Third Street, N.E., as a public street, see § 2(a) of the Dedication and Designation of Harry Thomas Way Emergency Act of 1998 (D.C. Act 12-579, January 12, 1999, 45 DCR 966).

Dedication of Harry Thomas Way. — Section 2 of D.C. Law 12-251 accepted, on a temporary basis, the dedication of land located between Eckington Place, N.E. and Third Street, N.E., as a public street, and designated the street as Harry Thomas Way.

Section 4(b) of D.C. Law 12-251 provided that the act shall expire after 225 days of its having taken effect.

Subchapter IV. Naming of Public Spaces.

§ 7-451. Scope of Council's authority.

Emergency act amendments. — For temporary designation of minor street as "Harry Thomas Way", see § 2(b) of the Dedication and Designation of Harry Thomas Way Emergency Act of 1998 (D.C. Act 12-579, January 12, 1999, 45 DCR 966).

Dedication of Harry Thomas Way. — Section 2 of D.C. Law 12-251 accepted, on a temporary basis, the dedication of land located between Eckington Place, N.E. and Third Street, N.E., as a public street, and designated the street as Harry Thomas Way.

Section 4(b) of D.C. Law 12-251 provided that the act shall expire after 225 days of its having taken effect.

Designation of Henry J. Daly Building. — Section 2 of D.C. Law 11-120 provided that pursuant to this section, the Municipal Center located at 300 Indiana Avenue, N.W., is designated the "Henry J. Daly Building."

Section 3 of D.C. Law 11-120 provided that pursuant to § 7-455, the act shall apply on November 22, 1996.

Designation of Joseph H. Cole Fitness Center. — Section 2 of D.C. Law 11-251 provided that pursuant to this section, the Council of the District of Columbia designated the recreation center located at 1200 Morse Street, N.E., formerly known as the Wheatley Recreation Center, as the "Joseph H. Cole Fitness Center."

Designation of Dave Clarke School of Law. — Section 3 of D.C. Law 12-85 provided that pursuant to this section, the Council of the

District of Columbia designates the UDC School of Law, at 4250 Connecticut Avenue, N.W., the Dave Clarke School of Law.

Designation of Dwight Anderson Mosley Athletic Field. — Section 3 of D.C. Law 12-105 provided that, pursuant to this section, the Council of the District of Columbia designates the outdoor recreational facilities of Taft Junior High School, at 18th and Perry Streets, N.E., the Dwight Anderson Mosley Athletic Field.

Section 4 of D.C. Law 12-105 provided that the act shall apply after August 28, 1998.

Designation of Brian T. A. Gibson Memorial Building. — Section 3 of D.C. Law 12-73 provided that pursuant to this section, the Council of the District of Columbia designates the Fourth District Police Headquarters, located at 6001 Georgia Avenue, N.W., as the Brian T. A. Gibson Memorial Building.

Section 5 of D.C. Law 12-73 provided that the act shall apply after February 5, 1999.

Designation of James M. McGee, Jr. Street, S.E. — Section 2 of D.C. Law 12-83 provided that pursuant to this section, the Council of District of Columbia designates the 2700 block of Irving Street, S.E. as "James M. McGee, Jr. Street S.E.".

Designation of Ronald H. Brown Middle School. — Section 3 of D.C. Law 12-84 provided that pursuant to this section, the Council hereby renames the Daniel C. Roper Middle School, located at 4800 Meade Street, N.E., as the "Ronald H. Brown Middle School."

Section 5 of D.C. Law 12-84 provided that the act shall apply as of April 3, 1998.

Designation of Bishop Aimilianos Laloussis Park. — Section 2 of D.C. Law 12-157 provided that, pursuant to this section, the small park located at 36th Street, Massachusetts Avenue and Garfield Street, N.W. (Reservation 330 N) is designated as the "Bishop Aimilianos Laloussis Park," in honor of Bishop Laloussis' humanitarian service to the Washington, D.C. community from 1934 to 1960.

Designation of Old Rock Creek Church Road, N.W. — Section 2 of D.C. Law 12-166 provided that pursuant to this section, the unnumbered block of Rock Creek Church Road, N.W. between North Capitol and Webster Streets, N.W. is designated as "Old Rock Creek Church Road, N.W."

Designation of Harris/Hinton Place N.W. — Section 3 of D.C. Law 12-235 provided that pursuant to this section, the Council of the District of Columbia designated the unit block of Hanover Place N.W. as Harris/Hinton Place, N.W.

Designation of Bishop Samuel Kelsey Way, N.W. — Section 4 of D.C. Law 12-235 provided that pursuant to this section, the Council of the District of Columbia designated the 1400 block through 1600 block of Park Road, N.W., as Bishop Samuel Kelsey Way, N.W.

Designation of Walter C. Pierce Community Park. — Section 2 of D.C. Law 11-1 provided that the Community Park West located at 2700 Adams Mill Road, N.W., at the intersection of Ontario Place, N.W. (Square 2547 and Lot 810), shall be named the "Walter C. Pierce Community Park."

Section 3 of D.C. Law 11-1 provided that a meaningful part of the full name "Walter C. Pierce Community Park" may be used on a park sign designating the name of the park.

Section 4 of D.C. Law 11-1 provided that the Secretary of the Council of the District of Columbia shall transmit a copy of the act, after it becomes effective, to the Surveyor of the District of Columbia, who shall record in the Office of the Surveyor, "Walter C. Pierce Community Park" as the name of the park.

Designation of Isle of Patmos Plaza. — Section 2 of D.C. Law 11-41 provided that the Council of the District of Columbia designates the 1200 block of Douglas Street, N.E., as the "Isle of Patmos Plaza".

§ 7-453. Alleys.

The Council shall not name any alley in the District of Columbia except when the alley provides the only access to a residential or commercial property, and except when the Council designates a symbolic name for the alley pursuant to § 7-453.1. (Mar. 10, 1983, D.C. Law 4-201, § 403, 30 DCR 148; Apr. 9, 1997, D.C. Law 11-236, § 2(a), 44 DCR 917.)

Effect of amendments. — D.C. Law 11-236 added "and except when the Council designates a symbolic name for the alley pursuant to § 7-453.1" at the end.

Legislative history of Law 11-236. — Law 11-236, the "Naming of Public Spaces Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-565, which was referred to the Committee on Public Works and the Environment. The Bill was adopted on first and second readings on November 7, 1996, and December 3, 1996, respectively. Signed by the Mayor on December 24, 1996, it was assigned Act No. 11-496 and transmitted to both Houses of Congress for its review. D.C. Law 11-236 became effective on April 9, 1997.

§ 7-453.1. Symbolic names.

The Council may designate a symbolic name for any public space, which shall be in addition to and subordinate to any name that is the mailing address for the public space, and which shall conform with the requirements of this chapter pertaining to the naming of public spaces. A symbolic designation shall not duplicate any name which includes the following words within its name: "Avenue", "Street", "Road", "Drive", "Place", "Circle", or "Alley". (Mar. 10, 1983, D.C. Law 4-201, § 403a, as added Apr. 9, 1997, D.C. Law 11-236, § 2(b), 44 DCR 917.)

Section references. — This section is referred to in § 47-398.2.

Effect of amendments. — D.C. Law 11-236 added this section.

Legislative history of Law 11-236. — See note to § 7-453.

§ 7-455. Use of living persons' names prohibited; use of deceased persons' names restricted.

Emergency act amendments. — For temporary designation of minor street as "Harry Thomas Way", see § 2(b) of the Dedication and Designation of Harry Thomas Way Emergency Act of 1998 (D.C. Act 12-579, January 12, 1999, 45 DCR 966).

Dedication of Harry Thomas Way. — Section 2 of D.C. Law 12-251 accepted, on a temporary basis, the dedication of land located between Eckington Place, N.E. and Third Street, N.E., as a public street, and designated the street as Harry Thomas Way.

Section 4(b) of D.C. Law 12-251 provided that the act shall expire after 225 days of its having taken effect.

§ 7-457. Submission of bill to involved advisory neighborhood commission.

(a) The initiator of a proposal to name or rename a public space shall:

(1) Submit a petition to the Council in support of the proposal which is signed by a majority of owners of property abutting the public space to be named or renamed, prior to Council adoption of a bill to designate the naming or renaming; and

(2) Pay fees to the District government, which shall be established by the Mayor by rulemaking, for all costs associated with the consideration of the proposal by the Council and the Mayor, if the proposal is enacted, all costs associated with the implementation of the proposal by the District government, including, but not limited to, the costs of installing and maintaining signs which designate the name of the public space.

(b) Prior to consideration by a committee of the Council of a bill to name or rename a public space, the Mayor shall provide the Council with the following:

(1) A surveyor's plat showing the public space to be named or renamed, the square in or adjacent to which the public space is located, and the abutting square of the affected area;

(2) A report on the number of mailing addresses affected by the proposal, the number of signs required to implement the proposal, and the fiscal impact of considering and implementing the proposal; and

(3) A report to the Council that all abutting property owners have been notified of the proposed symbolic name designation.

(c) Not less than 30 days prior to Council consideration of a bill to name or rename a public space in the District of Columbia, the Council shall submit a

copy of the bill for review and comment to each Advisory Neighborhood Commission in which the public space is located. (Mar. 10, 1983, D.C. Law 4-201, § 407, 30 DCR 148; Apr. 9, 1997, D.C. Law 11-236, § 2(c), 44 DCR 917.)

Section references. — This section is referred to in §§ 1-337 and 47-398.2.

Effect of amendments. — D.C. Law 11-236 rewrote the section.

Legislative history of Law Law 11-236. — See note to § 7-453.

CHAPTER 9. REMOVAL OF SNOW AND ICE.

§ 7-901. Removal from sidewalks by owner or occupant of abutting property.

University held not liable for private property. — A plaza, which was privately owned by university, which was created by closing off a section of one street and which did not fit the physical requirements of a sidewalk, did not qualify as a sidewalk; therefore, this section did not define university's duty to pedestrians on the plaza. Battle v. George Wash. Univ., 871 F. Supp. 1459 (D.D.C. 1994).

CHAPTER 10. RENTAL AND UTILIZATION OF PUBLIC SPACE.

Subchapter III. Rental of Public Structures in Public Space.

Sec.
7-1071. Definitions.
7-1072. Applicability.
7-1073. Permits for the occupation of public space, public rights of way, and public structures.
7-1074. Rulemaking.
7-1075. Inspection and audit of books and records.
7-1076. Surcharge authorization.

Subchapter II. Rental of Airspace.

§ 7-1042. Actions to recover use of leased airspace.

Section references. — This section is referred to in § 7-1072.

Delegation of Authority Pursuant to D.C. Law 11-76, the "Rental of Public Structures in Public Space Temporary Act of 1995." — See Mayor's Order 96-8, January 31, 1996 (43 DCR 615).

§ 7-1043. Area exempted from provisions of subchapter.

Section references. — This section is referred to in § 7-1072.

Delegation of Authority Pursuant to D.C. Law 11-138, the "Rental of Public Structures in the Public Space Emergency Act of 1995." — See Mayor's Order 95-117, September 12, 1995.

Subchapter III. Rental of Public Structures in Public Space.

§ 7-1071. Definitions.

For the purposes of this subchapter, the term:

(1) "Conduit" means any pipe or other hollow protective sleeve through which cable may be inserted.

(2) "Private structure" means all privately-owned fixtures on public space or in the public rights of way.

(3) "Public rights of way" means the surface, the air space above the surface (including air space immediately adjacent to a private structure located on public space or in a public right of way), and the area below the surface of any public street, bridge, tunnel, highway, lane, path, alley, sidewalk, or boulevard.

(4) "Public space" means all the publicly-owned property between the property lines on a street, park, or other public property as such property lines are shown on the records of the District, and includes any roadway, tree space, sidewalk, or parking between such property lines.

(5) "Public structure" means all publicly-owned fixtures on the public space and in the public rights of way. (Apr. 9, 1997, D.C. Law 11-198, § 601, 43 DCR 4569.)

Temporary addition of sections. — Sections 2 through 4 of D.C. Law 11-76 added new §§ 7-1051 through 7-1053.

Section 6(b) of D.C. Law 11-76 provided that the act shall expire on the 225th day of its having taken effect or upon the effective date of the Rental of Public Structures in the Public Space Act of 1995, whichever comes first.

Sections 601 through 606 of D.C. Law 11-226 added §§ 7-1071 through 7-1076.

Section 1001 of D.C. Law 11-226 provided that Titles I, II, III, V, and VI shall apply after September 30, 1996.

Section 1201(b) of D.C. Law 11-226 provided that the act shall expire after 225 days of its having taken effect, or upon the effective date of the Fiscal year 1997 Budget Support Amendment Act of 1996, whichever occurs first.

Emergency act amendments. — For temporary addition of subchapter, see §§ 1001 through 1006 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), §§ 601 through 606 of the Fiscal Year 1997 Budget Support Emergency Act of 1996 (D.C. Act 11-302, July 25, 1996, 43 DCR 4181), §§ 601 through 606 of the Fiscal Year 1997 Budget Support Emergency Amendment Act of 1996 (D.C. Act 11-429, October 29, 1996, 43 DCR 6151), and §§ 601-606 of the Fiscal Year 1997 Budget Support Congressional Adjournment Emergency Amendment Act of 1997 (D.C. Act 12-2, February 19, 1997, 44 DCR 1590).

Section 1001 of D.C. Act 11-302 provides for the application of the act.

Section 1001 of D.C. Act 11-429 provides for the application of the act.

Section 1001 of D.C. Act 12-2 provides for application of the act.

For temporary addition of sections regarding the authorization of the rental of public structures in public space and public right of way by the Mayor, see §§ 2 through 4 of the Rental of Public Structures in Public Space Emergency Act of 1995 (D.C. Act 11-138, August 15, 1995, 42 DCR 4725) and §§ 2 through 4 of the Rental of Public Structures in Public Space Congressional Review Emergency Act of 1995 (D.C. Act 11-143, October 23, 1995, 42 DCR 6035).

Legislative history of Law 11-76. — Law 11-76, the "Rental of Public Structures in Public Space Temporary Act of 1995," was introduced in Council and assigned Bill No. 11-424. The Bill was adopted on first and second readings on July 31, 1995, and October 10, 1995, respectively. Signed by the Mayor on October 23, 1995, it was assigned Act No. 11-146 and transmitted to both Houses of Congress for its review. D.C. Law 11-76 became effective on December 21, 1995.

Legislative history of Law 11-198. — Law 11-198, the "Fiscal Year 1997 Budget Support Act of 1996," was introduced in Council and assigned Bill No. 11-741, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 19, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-360 and transmitted to both Houses of Congress for its review. D.C. Law 11-198 became effective on April 9, 1997.

Legislative history of Law 11-226. — Law 11-226, the "Fiscal Year 1997 Budget Support Temporary Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-896. The Bill was adopted on first and second readings on October 1, 1996, and November 7, 1996, respectively. Signed by the Mayor on December 4, 1996, it was assigned Act No. 11-453 and transmitted to both Houses of Congress for its review. D.C. Law 11-226 became effective on April 9, 1997.

Application of provisions of D.C. Law 11-198. — Section 1001 of D.C. Law 11-198 provides that Titles I, II, III, V, and VI and sections 405 and 406 of the act shall apply after September 30, 1996.

Delegation of Authority Pursuant to D.C. Law 11-138, the "Rental of Public Structures in the Public Space Emergency Act of 1995." — See Mayor's Order 95-117, September 12, 1995.

§ 7-1072. Applicability.

Sections 7-1073 to 7-1075 of this subchapter shall not apply to:

(1) The rental of:

(A) Public space for use as a sidewalk cafe, enclosed flower or fruit stand, or for other retail purposes pursuant to §§ 7-1001 through 7-1005;

(B) Space for a vault pursuant to §§ 7-1007 through 7-1016; or

(C) Airspace for buildings, walkways, or other structures designed to be occupied by people on a regular basis, pursuant to §§ 7-1031 through 7-1043; or

(2) The occupation or use of public space or public streets by a vendor pursuant to a license to vend which has been issued to the vendor pursuant to § 47-2834. (Apr. 9, 1997, D.C. Law 11-198, § 602, 43 DCR 4569.)

Temporary addition of sections. — See note to § 7-1071.

Emergency act amendments. — See note to § 7-1071.

Legislative history of Law 11-198. — See note to § 7-1071.

Application of provisions of Law 11-198. — See note to § 7-1071.

§ 7-1073. Permits for the occupation of public space, public rights of way, and public structures.

(a) The Mayor may issue permits to occupy or otherwise use public rights of way, public space, and public structures pursuant to this subchapter for any purpose, including the use of the foregoing for conduits, including conduits which occupy public space, or a public right of way on April 9, 1997.

(b) The Mayor may issue permits to occupy public space, public rights of way, and public structures pursuant to this subchapter without regard to whether the permittee owns the property abutting the public space, public right of way, or public structure which is the subject of the permit. The permits shall be subject to the terms and conditions set forth in any agreement entered into by the Mayor and the permittee to carry out the purposes of this subchapter, and to any regulations promulgated pursuant to this subchapter.

(c) The Mayor may revoke any permit issued pursuant to this subchapter at any time. In the event the Mayor requires any permittee to vacate all or any part of any public space, public right of way, or public structure for which a permit charge has been paid, the Mayor shall refund as much of the prepaid charge as may represent that portion of the permit which has been revoked.

(d) Public space, public rights of way, and public structures which are the subject of a permit issued pursuant to this subchapter may be leased or subleased only with the express consent of the Mayor.

(e) Upon the expiration or revocation of any permit issued pursuant to this subchapter, the Mayor may require, at the expense of the permittee, the immediate removal of any apparatus, structure, or device affixed or erected in public space or on a public right of way, or on a public structure, and the restoration of the public space, public right of way, or public structure to its condition prior to the issuance of the permit. If the permittee does not comply with the requirements of this section, the Mayor may remove any of the

permittee's property and the cost of such removal shall be borne by the permittee. (Apr. 9, 1997, D.C. Law 11-198, § 603, 43 DCR 4569.)

Section references. — This section is referred to in § 7-1072.

Temporary addition of sections. — See notes to § 7-1071.

Emergency act amendments. — See notes to § 7-1071.

Legislative history of Law 11-198. — See note to § 7-1071.

Application of provisions of Law 11-198. — See note to § 7-1071.

Delegation of Authority Pursuant to D.C. Act 11-429, the "Fiscal Year 1997 Budget Support Emergency Act of 1996." — See Mayor's Order 96-175, December 9, 1996 (43 DCR 6981).

§ 7-1074. Rulemaking.

The Mayor shall issue regulations to implement this subchapter. These regulations shall:

(1) Provide for a nonrefundable application fee to be paid by any party applying for a permit pursuant to this subchapter. The fee shall be set in an amount to recoup some or all of the costs to the District of Columbia for reviewing the application;

(2) Provide for the payment of a nondiscriminatory, fair, and equitable charge for any permit issued in accordance with this subchapter. The Mayor may allow a permittee to pay a fixed charge for a set period of time, pay an amount based upon the amount of the public right of way or public space used or occupied, pay an amount based upon a revenue sharing formula, or provide in-kind services to the District in lieu of a monetary payment, or the Mayor may require a permittee to pay a combination of these items. The regulations may also provide for interest to be charged on late payments of any charges imposed pursuant to this subchapter;

(3) Generally establish categories of use and the extent to which public space, public rights of way, and public structures may be used; and

(4) Establish and regulate the process through which any modification or damage to the public space, public rights of way, or public structure may be compensated. The regulations shall include provisions governing the appropriate bonding and insurance requirements which must be satisfied by any party who receives a permit issued pursuant to this subchapter, and shall provide for any permittee to provide comprehensive indemnification to the District for any costs or damages which it incurs as a result of actions taken by the permittee in connection with the exercise of any rights or privileges granted in any permit issued pursuant to this subchapter. (Apr. 9, 1997, D.C. Law 11-198, § 604, 43 DCR 4569.)

Section references. — This section is referred to in § 7-1072.

Temporary addition of sections. — See notes to § 7-1071.

Emergency act amendments. — See notes to § 7-1071.

Legislative history of Law 11-198. — See note to § 7-1071.

Application of provisions of Law 11-198. — See note to § 7-1071.

§ 7-1075. Inspection and audit of books and records.

The Mayor shall require a permittee to maintain specific books, records, and accounts. All books, records, and accounts of any permittee may be inspected by the Mayor, and may be inspected and audited by the District of Columbia

Inspector General in order to determine whether the permittee has paid or will pay all amounts properly owed under any permit issued pursuant to this subchapter. (Apr. 9, 1997, D.C. Law 11-198, § 605, 43 DCR 4569.)

Section references. — This section is referred to in § 7-1072.

Temporary addition of sections. — See note to § 7-1071.

Emergency act amendments. — See notes to § 7-1071.

Legislative history of Law 11-198. — See note to § 7-1071.

Application of provisions of Law 11-198. — See note to § 7-1071.

§ 7-1076. Surcharge authorization.

Each public utility company regulated by the Public Service Commission shall recover from its utility customers all lease payments which it pays to the District of Columbia pursuant to this title through a surcharge mechanism applied to each unit of sale and the surcharge amount shall be separately stated on each customer's monthly billing statement. (Apr. 9, 1997, D.C. Law 11-198, § 606, 43 DCR 4569.)

Temporary addition of sections. — See notes to § 7-1071.

Emergency act amendments. — See notes to § 7-1071.

Legislative history of Law 11-198. — See note to § 7-1071.

Application of provisions of Law 11-198. — See note to § 7-1071.

CHAPTER 11. WASHINGTON NATIONAL AIRPORT.

§ 7-1101. Administration of Airport; definitions.

Metropolitan Washington Airports Authority established.

D.C. Law 6-67 was amended by D.C. Law 12-8, effective August 1, 1997.

Metropolitan Washington Airports Authority established. — D.C. Law 6-67 was amended on a temporary basis by § 2 of D.C. Law 12-199.

Section 4(b) of D.C. Law 12-199 provided that the act shall expire after 225 days of its having taken effect.

D.C. Law 6-67 was temporarily amended by § 2 of the Regional Airports Authority Emergency Amendment Act of 1998 (D.C. Act 12-436, July 31, 1998, 45 DCR 5746), § 2 of the Regional Airports Authority Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-502, November 10, 1998, 45 DCR 8125), and § 2 of the Regional Airports Authority Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-578, January 12, 1999, 46 DCR 964).

Section 4 of D.C. Act 12-502 provides for the application of the act.

Section 4 of D.C. Act 12-578 provides for the application of the act.

CHAPTER 12. DULLES INTERNATIONAL AIRPORT.

§ 7-1201. Construction and operation of Airport authorized.

Metropolitan Washington Airports Authority established.

D.C. Law 6-67 was amended by D.C. Law 12-8, effective August 1, 1997.

Metropolitan Washington Airports Authority established. — D.C. Law 6-67 was amended on a temporary basis by § 2 of D.C. Law 12-199.

Section 4(b) of D.C. Law 12-199 provided that the act shall expire after 225 days of its having taken effect.

D.C. Law 6-67 was temporarily amended by § 2 of the Regional Airports Authority Emergency Amendment Act of 1998 (D.C. Act 12-436, July 31, 1998, 45 DCR 5746), § 2 of the Regional Airports Authority Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-502, November 10, 1998, 45 DCR 8125), and § 2 of the Regional Airports Authority Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-578, January 12, 1999, 46 DCR 964).

Section 4 of D.C. Act 12-502 provides for the application of the act.

Section 4 of D.C. Act 12-578 provides for the application of the act.

CHAPTER 12A. DISTRICT OF COLUMBIA REGIONAL AIRPORTS AUTHORITY.

§ 7-1251. Definitions.

For the purposes of this act, the term:

(1) "Authority facilities" means any or all airport facilities now existing or subsequently acquired or constructed or caused to be constructed by the Authority under this act, together with any or all buildings, improvements, additions, extensions, replacements, appurtenances, lands, rights in land, water rights, air rights, franchises, machinery, equipment, furnishings, landscaping, easements, utilities, approaches, roadways and other facilities necessary or desirable in connection with or incidental to the facilities, including the existing Dulles Airport access road and its right-of-way, acquired or constructed by the Authority.

(2) "Authority" means the Metropolitan Washington Airports Authority to be created by the legislatures of the Commonwealth of Virginia and the District pursuant to an agreement or compact that is consistent with the provision of this act, or, if the Authority to be created is later abolished, the board, body, or commission or agency succeeding the principal functions of the Authority or upon whom the powers given by this act to the Authority shall be conferred by law.

(3) "Cost' means, as applied to Authority facilities, the cost of acquisition of all lands, structures, rights of way, franchises, easements, and other property rights and interests, the cost of lease payments, the cost of construction, the cost of demolishing, removing, or relocating any buildings or structures on lands acquired, including the cost of acquiring any lands to which the buildings or structures may be moved or relocated, the cost of any extensions, enlargements, additions and improvements, the cost of all labor, materials,

machinery and equipment, financing charges, interest on all bonds prior to and during construction and, if considered advisable by the Authority, for a period not exceeding 1 year after completion of construction , the cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing the Authority facilities, administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions and improvements, the cost of bond insurance and other devices designed to enhance the creditworthiness of the bonds, and other expenses necessary or incidental to the construction of the Authority facilities, the financing of this construction, and the placing of the Authority facilities in operation. Any obligation or expenses incurred by the District of Columbia ("District") or any agency of the District, with the approval of the Authority, for studies, surveys, borings, preparation of plans and specifications, or other work or materials in connection with the construction of the Authority facilities may be regarded as part of the cost of the Authority facilities and may be reimbursed to the District or the agency out of any funds available for these purposes or the proceeds of the revenue bonds issued for Authority facilities as authorized by this act.

(4) "Bonds" or "revenue bonds" means bonds and notes or refunding bonds and notes or bond anticipation notes or other obligations of the Authority issued under provisions of this act. (Dec. 3, 1985, D.C. Law 6-67, § 2, 32 DCR 6093.)

§ 7-1252. Metropolitan Washington Airports Authority Created.

There is created the Metropolitan Washington Airports Authority, ("Authority"), a public body corporate and politic and independent of all other bodies, having the powers and jurisdiction enumerated by this act, and other and additional powers as shall be conferred upon it jointly by the legislative authorities of the Commonwealth of Virginia and the District or by either of the jurisdictions and concurred in by the legislative authority of the other jurisdiction. (Dec. 3, 1985, D.C. Law 6-67, § 3, 32 DCR 6093.)

§ 7-1253. Authorization of the Authority.

The Authority created by this act is authorized, when similarly authorized by the Commonwealth of Virginia, to acquire from the United States of America, by lease or otherwise, the 2 airports known as Washington National Airport and Washington Dulles International Airport and all related properties now administered by Metropolitan Washington Airports, and agency of the Federal Aviation Administration of the United States Department of Transportation, but only with the approval of the Mayor of the District of Columbia. Subject to this mayoral approval, general consent is given to conditions imposed by the Congress of the United States on acquisitions that are not inconsistent with this act. The Mayor shall procure the concurrence of the Council of the District of Columbia, by resolution, prior to Mayoral approval of the terms of the compact, lease or other agreements which effectuate the acquisition. (Dec. 3, 1985, D.C. Law 6-67, § 4, 32 DCR 6093.)

§ 7-1254. Membership; terms; officers.

(a) The Authority shall consist of 13 members appointed as follows: 5 appointed by the Governor of the Commonwealth of Virginia, 3 appointed by the Mayor of the District of Columbia, 2 appointed by the Governor of the State of Maryland, and 3 appointed by the President of the United States. Members representing the District of Columbia shall be subject to confirmation by the Council of the District of Columbia. For the purposes of doing business, 7 members shall constitute a quorum. The failure of a single appointing official to appoint 1 or more members, as provided in this act, shall not impair the Authority's creation when the other conditions of this creation have been met.

(b) Members shall not hold elective or appointive public office, shall serve without compensation, and shall reside within the Washington Standard Metropolitan Statistical Area, except that the members appointed by the President of the United States shall be registered voters of states other than Maryland or Virginia or the District of columbia. Members of the Authority shall be entitled to reimbursement of their expenses incurred in attending the meetings of the Authority or while otherwise engaged in the discharge of their duties.

(c) Appointments to the Authority shall be for a period of 6 years, except that initial appointments shall be made as follows: each jurisdiction shall appoint 1 member for a full 6-year term, a second member for a 4-year term, and in the case of the Commonwealth of Virginia and the District of Columbia, a third member for a 2-year term. The Governor of Virginia shall make the final 2 Virginia initial appointments for one 2-year term and one 4-year term. The President shall make one of his initial appointments pursuant to the Metropolitan Washington Airports Amendments Act of 1996, approved October 9, 1996 (110 Stat. 3213), for a 4-year term. The President shall make subsequent appointments for 6-year terms.

(d) Eight affirmative votes shall be required to approve bond issues and the annual budget of the Authority.

(e) Each member may be removed or suspended form office only for cause and in accordance with the laws of the jurisdiction from which the member is appointed.

(f) The Authority shall elect annually 1 of its members as chairman and another as vice-chairman and shall also elect annually a secretary and a treasurer, or a secretary-treasurer, who may or may not be members of the Authority. The Authority shall prescribe the powers and duties of these officials. The Authority may also appoint form its staff an assistant secretary and an assistant treasure, or an assistant secretary-treasurer, who shall, in addition to other duties, discharge such functions of the secretary and the treasurer.

(g) A vacancy among the members shall be filled in the manner in which the original appointment was made. Members of the Authority shall continue to serve until their successors are duly appointed. Any person appointed to fill a vacancy shall serve for the unexpired term. Any member of the Authority shall be eligible for reappointment for 1 additional term.

(h) Members of the Authority, including any nonvoting members, shall not be personally liable for any act done or action taken in their capacities as

members of the Authority, nor shall they be personally liable for any bond, note, or other evidence of indebtedness issued by the Authority. (Dec. 3, 1985, D.C. Law 6-67, § 5, 32 DCR 6093; Aug. 1, 1997, D.C. Law 12-8, § 2(a), 44 DCR 3371.)

§ 7-1255. Powers and duties of the Authority.

For the purposes of acquiring, operating, maintaining, improving, promoting and protecting Washington National Airport and Washington Dulles International Airport together as primary airports for public purposes serving the metropolitan Washington area, the Authority shall have all necessary or convenient powers including, but not limited to, the power:

(1) To adopt and amend by-laws for the regulation of its affairs and the conduct of its business;

(2) To plan, establish, operate, develop, construct, enlarge, maintain, equip, operate and protect the airports;

(3) To adopt and amend regulations to carry out the powers granted by this sections;

(4) To adopt an official seal and alter this seal at its pleasure;

(5) To appoint one or more advisory committees;

(6) To issue revenue bonds of the Authority for any of its purposes, payable solely from the fees and revenues pledged for their payment, and to refund its bonds, all as provided in this acts;

(7) To borrow money on a short-term basis and issues from time to time its notes therefore payable on terms, conditions, or provisions as it may deem advisable;

(8) To fix, revise, charge, and collect rates, fees, rentals and other charges for the use of the airports;

(9) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act;

(10) To employ, in its discretion, consulting engineers, attorneys, accountants, construction and financial experts, superintendents, managers, and other employees and agents as may be necessary, and to fix their compensation and benefits. However, the Authority shall comply with any act of Congress concerning former employees of the Federal Aviation Administration and Metropolitan Washington Airports;

(11) To sue and be sued in its own name, plead and be impleaded;

(12) To construct or permit the construction of commercial and other facilities upon the airport property on terms established by the Authority and consistent with the purposes of this act;

(13) To make and enter into all contracts and agreements necessary or desirable to the performance of its duties, the proper operation of the airports and the furnishing of services to the traveling public and airport users, and these contracts shall be exclusive or limited when it is necessary to further the public safety, improve the quality of service , avoid duplication of services, or conserve airport property and the airport environment;

(14) To apply for, receive, and accept payment, appropriations, grants, gifts, loans, advances, and other funds, properties, and services as may be transferred or made available to it by the United States government or any other public or private entity or individual; and

(15) To do all acts necessary or convenient to carry out the powers expressly granted in this act. (Dec. 3, 1985, D.C. Law 6-67, § 6, 32 DCR 6093.)

§ 7-1256. Authority rules and regulations.

(a) The Authority shall have power to adopt, amend, and repeal rules and regulations pertaining to the use, maintenance and operation of its facilities and governing the conduct of persons and organizations using its facilities.

(b) Unless the Authority shall by unanimous vote of all members present determine that an emergency exists, the Authority shall, before the adoption of any rule or regulation or alteration, amendment or modification;

(1) Make the rule, regulation, alteration, amendment, or modification in convenient form available for public inspection in the office of the Authority for at least 10 days;

(2) Publish a notice in a newspaper or newspapers of general circulation in the political subdivision where the Authority's facilities are located and the District declaring the Authority's intention to consider adopting the rule, regulation, alteration, amendment, or modification and informing the public that the Authority will hold a public hearing at which any person may appear and be heard for or against the adoption of the rule or regulation or the alteration, amendment, or modification, on a day and at a time to be specified in the notice, after the expiration of at least 10 days from the day of the publication; and

(3) Hold the public hearing on the day and at the time specified in the notice or any adjournment of the hearing, and hear persons appearing for or against the rule, regulation, alteration, amendment, or modification.

(c) The Authority's rules and regulations shall be available for public inspection in the Authority's principal office.

(d) The Authority's rules and regulations relating to:

(1) Air operations and motor vehicle traffic, including but not limited to, motor vehicle speed limits and the location of and payment for public parking;

(2) Access to and use of Authority facilities including but not limited to solicitation, handbilling, picketing and the conduct of commercial activities; and

(3) Aircraft operation and maintenance, shall have the force and effect of law, as shall any other rule or regulation of the Authority that shall contain a determination by the Authority that it is necessary to accord the same effect of law in the public interest; except, that, with respect to motor vehicle traffic rules and regulations, the Authority shall obtain the approval of the traffic engineer or comparable official of the political subdivision in which the rules or regulations are to be enforced. The violation of any rule or regulation of the Authority relating to motor vehicle traffic shall be tried and punished in the same manner as if it had been committed on the public roads of the political subdivisions in which the violation occurred. All other violations of the Authority's rules and regulations having the effect of law shall be punishable as misdemeanors. (Dec. 3, 1985, D.C. Law 6-67, § 7, 32 DCR 6093.)

§ 7-1257. Police powers.

(a) The Authority's employees meeting the minimum requirements of the Commonwealth of Virginia's Criminal Justice Officer's Training Standards

Commission may be given special police power by any of the circuit courts of the political subdivisions in which the Authority facilities are located. The authority conferred upon these special police officers shall be exercised only upon the Authority's facilities and shall be in all terms consistent with the requirements of chapter 3 of title 15.1 of the Code of Virginia.

(b) These special police officers shall have all powers vested in police officers under chapter 3 of title 15.1 of the Code of Virginia and shall be responsible upon the Authority's facilities for enforcing the Authority's rules and regulations and all other applicable statutes, ordinances, rules, and regulations of the Commonwealth of Virginia and political subdivision, agencies and instrumentalities of the Commonwealth of Virginia.

(c) These special police officers shall issue summonses to appear, or arrest on view or on information without warrant as permitted by law, and conduct before any court of competent jurisdiction any person violating any rule or regulation.

(d) For the purpose of enforcing these statutes ordinances, rules, and regulations, the court or courts having jurisdiction for the trial of criminal offenses of the political subdivision where the offense was committed shall have jurisdiction to try a person charged with violation of the statutes, ordinances, rules, and regulations. (Dec. 3, 1985, D.C. Law 6-67, § 8, 32 DCR 6093.)

§ 7-1258. Operation of foreign trade zone.

The Authority may establish, operate, and maintain a foreign trade zone and otherwise expedite and encourage foreign commerce. (Dec. 3, 1985, D.C. Law 6-67, § 9, 32 DCR 6093.)

§ 7-1259. Acquisition of property; eminent domain.

(a) The Authority may acquire by purchase, lease, or grant additional lands, structures, property, rights, rights-of-way, franchises, easements and other interests in lands as it may consider necessary or convenient for construction and operation of the airports, upon terms and at prices as may be considered by it to reasonable and can be agreed upon between it an the owner.

(b) The District may provided services, donate real or personal property, and make appropriations to the Authority for the acquisition, construction, maintenance, and operation of the Authority facilities. The Authority may agree to assume or reimburse the District for any indebtedness incurred by the District with respect to facilities conveyed by the District to the Authority. With the consent of the Council of the District of Columbia, the agreement may be made subordinate to the Authority's indebtedness to others.

(c) The Authority is granted full power to exercise the right of eminent domain within the Commonwealth of Virginia in the acquisition of any lands, easements, privileges or other property interests that are necessary for air port and landing field purposes, including the right to acquire, by eminent domain, aviation easements over lands and water outside the boundaries of its airports or landing fields where necessary in the interests of safety for aircrafts to provide unobstructed air space for the landing and taking off of aircraft utilizing its airports and landing fields even though the aviation easement may

be inconsistent with the continued use of the land, or inconsistent with the maintenance, preservation and renewal of any structure or any tree or other vegetation standing or growing on the land at the time of the acquisition. Proceedings for the acquisition of lands, easements and privileges by condemnation may be instituted and conducted in the name of the Authority in accordance with title 25 of the Code of Virginia. (Dec. 3, 1985, D.C. Law 6-67, § 10, 32 DCR 6093.)

§ 7-1260. Revenue bonds.

(a) The Authority may provide by resolution for the issuance, at 1 time or from time to time, of revenue bonds of the Authority for the purpose of paying all or any part of the cost of Authority facilities, including the refunding of federal appropriations not reimbursed to the United States Treasury by the Metropolitan Washington Airports. The principal of and the interest on these bond shall be payable solely from the funds provided for this payment. The bonds of each issue shall be dated, shall mature at times not exceeding 40 years form their dates, as may be determined by the Authority, and may be subject to redemption or repurchase before maturity, at the option of the Authority, at prices and under those terms and conditions may be fixed by the Authority before the issuance of the bonds. The bonds may bear interest payable at times and at rates as determined by the Authority or as determined in the manner as the Authority may provide, including the determination by agents designated by the Authority under guidelines established by it. The Authority shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached to the bonds, and shall fix the denominations of the bonds and the places of payment of principal and interest, which may be at any bank or trust company within or without the District of columbia. In case any officer whose signature or a facsimile shall be valid and sufficient for all purposes the same as if the officer had remained in office until delivery. Notwithstanding any other provision of this act or any recitals in any bonds issued under the provisions of this section, all bonds shall be considered to be negotiable instruments under the laws of the District. The bonds may be issued in coupon or in registered form, or both, as the Authority may determine, and provision may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. The Authority may sell bonds in the manner, either at public or negotiated sale, and for the price, as it may determine will best effect the purposes of this section.

(b) The proceeds of the bonds shall be used solely for the payment of the cost of Authority facilities, including improvements, and shall be disbursed in the manner and under the restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds. If the proceeds of the bonds of any issue, by error of estimates or otherwise, shall be less than the cost, additional bonds may in like manner be issued to provide the amount of the deficit, and, unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust

agreements securing the bonds, shall be considered to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued. If the proceeds of the bonds of any issue shall exceed the cost, the surplus shall be deposited to the credit of the sinking fund for the bonds.

(c) Before the preparation of definitive bonds, the Authority may, under the same restrictions, issue interim receipts or temporary bonds, with or without coupons, exchangeable for definitive bonds when the bonds have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds that become mutilated or have been destroyed or lost. Bonds may be issued under the provisions of this section without obtaining the consent of any agency of the District and without any other proceedings, conditions or things not specifically required by this section. (Dec. 3, 1985, D.C. Law 6-67, § 11, 32 DCR 6093.)

§ 7-1261. Refunding bonds.

The Authority may provide by resolution for the issuance of its revenue refunding bonds for the purpose of refunding any bonds then outstanding which shall have been issued under the provisions of this act, including the payment of any redemption premium on the bonds and any interest accrued or to accrue to the date of redemption of the bonds, and if considered advisable by the Authority, for either or both of the following additional purposes: constructing improvements, extensions or enlargement of the Authority facilities in connection with which the bonds to be refunded shall have been issued; and, paying all or any part of the cost of any additional Authority facilities. The issuance of bonds, the maturities, and other details of the issuance, the rights of the holders of the bonds, and the rights, duties and obligations of the Authority in respect to the bonds, shall be governed by the provisions of this act insofar as this act may be applicable. Revenue refunding bonds issued under this section may be sold or exchanged for outstanding bonds issued under this act and, if sold, the proceeds of the bonds may be applied to the purchase, redemption, or payment of outstanding bonds. (Dec. 3, 1985, D.C. Law 6-67, § 12, 32 DCR 6093.)

§ 7-1262. Pledge of funds.

All monies received pursuant to the provisions of this act, whether as proceeds form the sale of bonds, as revenues, or as grants, appropriations, or other funds provided by federal, state, or local governments, may be pledged to the payment of bonds issued by the Authority and, if so pledged, shall be considered to be trust funds to be held and applied solely as provided in this act. (Dec. 3, 1985, D.C. Law 6-67, § 13, 32 DCR 6093.)

§ 7-1263. Marketability of bonds.

The Authority may exercise all or any party or combination of the powers granted by this act, including the power: To make covenants other than and in addition to the convenants expressly authorized, of like, or different character; to make covenants and to do all acts as may be necessary, convenient, or

desirable in order to secure its bonds or, in the absolute discretion of the Authority, as will tend to make the bonds more marketable, notwithstanding that the covenants or acts may not be enumerated in this act. (Dec. 3, 1985, D.C. Law 6-67, § 14, 32 DCR 6093.)

§ 7-1264. Bonds as legal investments and security for public deposits.

Bonds issued by the Authority under the provisions of this act are securities in which all public officers and public bodies of the District, all insurance companies, trust companies, banking associations, investment companies, executors, administrators, trustees and other fiduciaries may properly and legally invest funds, including capital in their control or belonging to them. These bonds are securities that may properly and legally be deposited with and received by any municipal officer or any agency of the District for any purpose for which the deposit of bonds or obligations is now or may subsequently be authorized by law. (Dec. 3, 1985, D.C. Law 6-67, § 15, 32 DCR 6093.)

§ 7-1265. Credit of the District not pledged.

Revenue bonds issued under the provisions of this act shall not constitute a debt of the District nor a pledge of the faith and credit of the District. The bonds shall be payable solely from funds provided for the bonds from revenues. The issuance of revenue bonds under the provisions of this act shall not directly, indirectly, or contingently obligate the District to any form of taxation whatever. All revenue bonds shall contain a statement on their face substantially to this effect. (Dec. 3, 1985, D.C. Law 6-67, § 16, 32 DCR 6093.)

§ 7-1266. Trust agreement.

In the discretion of the Authority any bonds issued under the provisions of this act may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the power of a trust company within or without the District. The trust agreement or the resolution providing for the issuance of the bonds may pledge or assign the fees and other revenues to be received, but shall not convey or mortgage the airports or any part of the airports. The trust agreement or resolution providing for the issuance of the bonds may contain provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting fourth the duties of the Authority in relation to the acquisition of property and the construction, improvement, maintenance, repair, operation and insurance of the airports, the rates or fees or other charges to be charged, and the custody, safeguarding the application of all monies. It shall be lawful for any bank or trust company incorporated under the laws of the District that may act as depositary of the proceeds of bonds or of revenues to furnish indemnifying bonds or to pledge securities as may be required by the Authority. Any trust agreement may set forth the rights and remedies of the bondholders. In addition, any trust agreement or resolution may contain other provisions the Authority considers reasonable and proper for the security of the bondholders.

All expenses incurred in carrying out the provisions of the trust agreement or resolution may be treated as a part of the cost of the operation of the airports. (Dec. 3, 1985, D.C. Law 6-67, § 17, 32 DCR 6093.)

§ 7-1267. Revenues.

The Authority may fix, revise, charge, and collect fees or other charges for the use of the airports, contract with any person, partnership, association, or corporation desiring the use of any part of the airports, including the right-of-way adjoining the airports for placing on the airports telephone, telegraph, electric light or power lines, and fix the terms, conditions, rents and fees or other charges for use. Fees or other charges shall be so fixed and adjusted in respect of the aggregate of fees or other charges form the airports as to provide a fund sufficient with other revenues, if any, (1) to pay the cost of maintaining, repairing and operating the airports, (2) to pay the principal of and interest on bonds as they become due and payable, and (3) to create reserves for these purposes. The fees and other charges and all other revenues derived from the airports, except the part as may be necessary to pay the cost of maintenance, repair, and operation and provide reserves as may be provided for in the resolution authorizing the issuance of the bonds or in the trust agreement securing the bonds, shall be set aside at regular intervals as may be provided in the resolution or the trust agreement in a sinking fund, which is pledged to, and charged with, the payment of the principal of the interest on the bonds as they become due, and the redemption price or the purchase price of bonds retired by call or purchase as provided in the bonds. The pledge shall be valid and binding from the time when the pledge is made. The fees, other charges, and other revenues or other monies so pledged and subsequently received by the Authority shall immediately be subject to the lien of the pledge without any physical delivery of the lien or further act, and the lien of the pledge shall be valid and binding as against all parties having claims of any kind of tort, contract or otherwise against the Authority, irrespective of whether the parties have notice of the lien. Neither the resolution nor any trust agreement by which a pledge is created need be filed or recorded except in the records of the Authority. The use and disposition of monies to the credit of the sinking fund shall be subject to the provisions of resolution authorizing the issuance of the bonds or of the trust agreement. Except as may otherwise be provided in the resolution or the trust agreement, the sinking fund shall be a fund for all these bonds without distinction or priority of 1 over another. (Dec. 3, 1985, D.C. Law 6-67, § 18, 32 DCR 6093.)

§ 7-1268. Trust funds.

All proceeds form the sale of bonds and revenues derived from the bonds received pursuant to the provisions of this act shall be considered to be trust funds to be held and applied solely as provided in this act. The Authority may, in the resolution authorizing the bonds or in the trust agreement securing the bonds, provide for the payment of the proceeds of the sale of the bonds and the revenues of the Authority to a trustee, which may be any trust company or bank having the powers of a trust company within or without the District, which shall act as trustee of the funds, and hold and apply the funds to the

purposes of this act, subject to any regulations this act and the resolution or trust agreement may provide. The trustee may invest and reinvest the funds in securities as may be provided in the resolution authorizing the bonds or in the trust agreement securing the bonds. (Dec. 3, 1985, D.C. Law 6-67, § 19, 32 DCR 6093.)

§ 7-1269. Annual audit.

The Authority shall prepare financial statements at the end of each of its fiscal years in conformity with generally accepted accounting principles. These financial statement shall be examined annually by an independent certified public accountant in accordance with generally accepted auditing standards. Copies of each audit report shall be furnished to the Governor of the Commonwealth of Virginia and to the Mayor of the District not later than 120 days after the end of each fiscal year of the Authority and shall be open to public inspection. (Dec. 3, 1985, D.C. Law 6-67, § 20, 32 DCR 6093.)

§ 7-1270. Remedies.

Any holder of bonds issued under the provisions of this act or of any of the coupons appertaining to the bonds, and the trustee under any trust agreement, except to the extent the rights given by this act, may be restricted by the trust agreement, may either at law or in equity, by suit, action, injunction, mandamus or other proceedings, protect and enforce any and all rights under the laws of the District, or granted by this act or under the trust agreement or the resolution authorizing the issuance of the bonds and may enforce and compel the performance of all duties required by this act or by the agreement or resolution to be performed by the Authority or by any officer or agent of the Authority including the fixing, charging, and collection of fees or other charges. (Dec. 3, 1985, D.C. Law 6-67, § 21, 32 DCR 6093.)

§ 7-1271. Exemption from taxation.

The exercise of the powers granted by this act shall be in all respects for the benefit of the inhabitants of the District for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience, and prosperity, and as the operation and maintenance of the airport by the Authority will constitute the performance of essential governmental functions, the Authority shall not be required to pay any taxes or assessments upon the airports or any property acquired or used by the Authority under the provisions of this act or upon the the income therefrom; and the bonds issued under the provisions of this act, their transfer and the income from the bonds, including any profit made on the sale of the bonds, shall at all times be free and exempt from taxation by the District. (Dec. 3, 1985, D.C. Law 6-67, § 22, 32 DCR 6093.)

§ 7-1272. Jurisdiction of courts; liability for contracts and torts.

(a) The courts of the Commonwealth of Virginia shall have original jurisdiction over all actions brought by or against the Authority, which courts shall i all cases apply the law of the Commonwealth of Virginia.

(b) The Authority shall be liable for its contracts and for its torts and those of its members, officers, employees, and agents committed in the conduct of any proprietary function, in accordance with the law of the Commonwealth of Virginia but shall not be liable for any torts occurring in the performance of a governmental function. The exclusive remedy for breach of contracts and torts for which the Authority shall be liable, as provided by this act, shall be by suit against the Authority. Nothing in this act shall be construed as a waiver by the District or the Commonwealth of Virginia or its political subdivisions of any immunity from suit.

(c) The Authority shall be responsible for all executory contracts entered into by the United States with respect to the former Metropolitan Washington Airports before the date of acquisition of those airports, except that the procedure for disputes resolution contained in any contract shall continue to govern the performance of the contract unless otherwise agreed to by the parties to the contract.

(d) The Authority shall not be responsible for any tort claims arising before the date of transfer. (Dec. 3, 1985, D.C. Law 6-67, § 23, 32 DCR 6093.)

§ 7-1273. Procurement exemption.

In light of the multi-jurisdictional nature of the Authority, an exemption is provided to the Authority from all laws and regulations of the District governing public procurement. (Dec. 3, 1985, D.C. Law 6-67, § 24, 32 DCR 6093.)

§ 7-1274. Act liberally construed.

This act, being necessary for the welfare of the District and its inhabitants, shall be liberally construed to effect its purposes. (Dec. 3, 1985, D.C. Law 6-67, § 25, 32 DCR 6093.)

§ 7-1275. Constitutional construction.

The provisions of this act are severable and if any of its provisions are held unconstitutional by any court of competent jurisdiction, the decision of that court shall not affect or impair any of the remaining provisions of this act. It is declared to be the legislative intent that this act would have been adopted had any unconstitutional provisions not been included. (Dec. 3, 1985, D.C. Law 6-67, § 26, 32 DCR 6093.)

§ 7-1276. Inconsistent laws inapplicable.

All other general or special laws inconsistent with any provision of this act are declared to be inapplicable to the provision of this act. (Dec. 3, 1985, D.C. Law 6-67, § 27, 32 DCR 6093.)

CHAPTER 14. MISCELLANEOUS PROVISIONS.

§ 7-1414. Streets to be under or over railroad tracks.

East Capitol Street bridge. — Public Law No. 84-731 operates as a specifically-carved exception to this general statute; and, therefore, railroad company did not have a statutory duty to maintain the East Capitol Street bridge underpass. Brown v. Consolidated Rail Corp., App. D.C., 717 A.2d 309 (1998).

CHAPTER 15. METROPOLITAN WASHINGTON AIRPORTS.

§ 7-1506. Airports Authority.

Section references.
This section is referred to in § 1-633.7.

TITLE 8. PARKS AND PLAYGROUNDS.

CHAPTER 1. GENERAL PROVISIONS.

§ 8-111. Transfer of jurisdiction over property between United States and District of Columbia — Authorization.

* * * * *

(June 6, 1924, ch. 270, § 9; May 20, 1932, 47 Stat. 161, ch. 197, § 1; July 19, 1952, 66 Stat. 790, ch. 949, § 1; Aug. 30, 1954, 68 Stat. 967, ch. 1076, § 1(20); 1973 Ed., § 8-115; May 16, 1995, D.C. Law 10-255, § 11, 41 DCR 5193.)

Effect of amendments. — D.C. Law 10-255 inserted "Provided further, that the Mayor shall submit to the Council for approval by resolution any proposed transfer of jurisdiction of property pursuant to this section" near the end.

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

Transfer of jurisdiction over District of Columbia Correctional Facility. — Section 6(b) of D.C. Law 11-276 provides that notwithstanding this section, the Council of the District of Columbia approves the transfer from the United States government to the District of Columbia of jurisdiction over that portion of Lot 800 of Square 1112 upon which is situated the District of Columbia Correctional Treatment Facility, as shown on a plat to be drawn and filed in the Office of the Surveyor of the District of Columbia.

Transfer of Jurisdiction over a Portion of Independence Avenue, S.W., S.O. 85-96, Resolution of 1996. — Pursuant to Resolution 11-207, effective February 6, 1996, the Council approved the transfer of jurisdiction, for park purposes, from the District of Columbia to the National Park Service of the United States Department of the Interior, over a portion of the north side of Independence Avenue, S.W., between 4th Street, S.W., and Maryland Avenue, S.W., in Ward 2.

Transfer of Jurisdiction over a Portion of Parcel 174-15 and Lot 802 in Square 4325, S.O. 85-182, Resolution of 1996. — Pursuant to Resolution 11-235, approved March 5, 1996, and effective upon publication on March 15, 1996, Council approved the transfer of jurisdiction, for open space and urban renewal development purposes, from the National Park Service of the United States Department of the Interior to the District of Columbia over a portion of Parcel 17⅛₁₅ and Lot 802 in Square 4325 located at the intersection of Bladensburg Road, N.E., and Eastern Avenue, N.E., in Ward 5.

Editor's notes. — D.C. Act 10-302, which affected this section as set out in the 1995 Replacement Volume, became Law 10-255, effective May 16, 1995. The historical citation for this section and notes relating to D.C. Law 10-255 have been set out herein to clarify the Law number and effective date of that act.

Tort liability also transfers. — Where the property on which plaintiff fell had previously been ceded to the United States for park purposes pursuant to a transfer of jurisdiction effected in accordance with this section, the United States exercised exclusive jurisdiction over the area, and plaintiff had no claim against the District of Columbia. Lovitt v. District of Columbia, 942 F. Supp. 618 (D.D.C. 1996).

§ 8-137.1. Authority of the Director of the Department of Recreation and Parks to regulate District parks.

* * * * *

(b) The Director of the Department may:

* * * * *

(4) Terminate a limit, condition, restriction, or any other decision made pursuant to this subsection.

* * * * *

(Apr. 18, 1996, D.C. Law 11-110, § 19, 43 DCR 530.)

Effect of amendments.
D.C. Law 11-110 validated a previously made stylistic change in (b)(4).

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

CHAPTER 2. RECREATION BOARD.

Subchapter II. Functions and Administrative Responsibilities.

Subchapter II. Functions and Administrative Responsibilities.

§ 8-213.1. Disposition of fees.

* * * * *

(Apr. 29, 1942, ch. 265, art. II, § 4a, as added May 16, 1995, D.C. Law 10-255, § 12, 41 DCR 5193.)

Effect of amendments. — D.C. Law 10-255 added this section.

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1995, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

Editor's notes. — D.C. Act 10-302, which affected this section as set out in the 1995 Replacement Volume, became Law 10-255, effective May 16, 1995. The historical citation for this section and note relating to D.C. Law 10-255 have been set out herein to clarify the Law number and effective date of that act.

CHAPTER 3. FUNDRAISING FOR RECREATIONAL FACILITIES.

§ 8-302. Authority of Department of Recreation and Parks.

Delegation of Authority Pursuant to D.C. Law 10-246, the Recreation Act of 1994. — See Mayor's Order 96-55, April 24, 1996 (43 DCR 2453).

§ 8-303. Creation of Fund; accounting and investment.

* * * * *

(d) Proceeds of the Fund may be invested in a prudent and reasonable manner consistent with applicable District government policies and procedures with recommendations from the Recreation Assistance Board established by § 8-306. (Mar. 23, 1995, D.C. Law 10-246, § 4, 42 DCR 452; Apr. 18, 1996, D.C. Law 11-110, § 20(a), 43 DCR 530.)

Section references. — This section is referred to in § 8-306.

Effect of amendments. — D.C. Law 11-110 validated the previously made substitution of "§ 8-306" for an inaccurate section reference in (d).

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

§ 8-304. Park adoptions and sponsorships.

(a) Individuals, associations, corporations, partnerships, neighborhood and civic groups or other governmental entities may adopt or sponsor Departmental programs, sites, or operations. The form of such adoption or sponsorship may be made by a donation of funds to the Fund, services, equipment, or any other asset with intrinsic value. The Department may form partnerships with any of the above stated groups to accomplish a stated goal or mission of the Department.

* * * * *

(Apr. 18, 1996, D.C. Law 11-110, § 20(b), 43 DCR 530.)

Effect of amendments. — D.C. Law 11-110 validated a previously made substitution of "other" for "another" in the first sentence of (a).

Legislative history of Law 11-110. — See note to § 8-303.

§ 8-306. Establishment of Recreation Assistance Board.

* * * * *

(b) Board members shall be appointed by the Mayor for 4 year terms of office and shall serve without compensation.

* * * * *

(d) The Board shall provide resources and expertise on all matters relating to the mission of the Department with special emphasis on fundraising assistance, marketing of programs, and recommendations regarding the expenditure and growth of the Fund established in § 8-303.

* * * * *

(Apr. 18, 1996, D.C. Law 11-110, § 20(c), 43 DCR 530; _____, 1999, D.C. Law 12- (Act 12-622), § 4(l), 46 DCR 1355.)

Section references. — This section is referred to in § 8-303.

Effect of amendments. — D.C. Law 11-110 validated a previously made reference correction in (d).

D.C. Law 12-(Act 12-622) deleted "with the advice and consent of the Council" following "office" in (b).

Emergency act amendments. — For temporary amendment of section, see § 4(l) of the Confirmation Emergency Amendment Act of 1999 (D.C. Act 13-25, March 15, 1999, 46 DCR 2971).

Section 6 of D.C. Act 13-25 provides for the application of the act.

Legislative history of Law 11-110. — See note to § 8-303.

Legislative history of Law 12-(D.C. Act 12-622). — Law 12-(D.C. Act 12-622), the "Confirmation Amendment Act of 1998," was introduced in Council and assigned Bill No. _____, which was referred to the Committee on _____. The Bill was adopted on first and second readings on _____, and _____, respectively. Signed by the Mayor on _____, it was assigned Act No. 12-622 and transmitted to both Houses of Congress for its review. D.C. Law 12-(D.C. Act 12-622) became effective on _____.

TITLE 9. PUBLIC BUILDINGS AND GROUNDS.

CHAPTER 1. REGULATORY PROVISIONS.

§ 9-112. Same — Unlawful conduct.

Senate gallery. — It is not necessary to decide if the Senate gallery is a designated public forum rather than a nonpublic forum to decide the constitutionality of paragraph (b)(4) of this section. Smith-Caronia v. United States, App. D.C., 714 A.2d 764 (1998).

Paragraph (b)(4) constitutes reasonable restriction. — Paragraph (b)(4) of this section is viewpoint-neutral on its face and imposes reasonable time, place, and manner restrictions on speech consistent with the government interest it serves while leaving open ample means of communication not calculated to disrupt the orderly conduct of the legislature's business. Smith-Caronia v. United States, App. D.C., 714 A.2d 764 (1998).

Paragraph (b)(4) is not overbroad. — Paragraph (b)(4) of this section is not overbroad, and there is no need for construction limiting it to include only actual, material disruptions. Smith-Caronia v. United States, App. D.C., 714 A.2d 764 (1998).

No warning is required prior to arrest under paragraph (b)(4). — Unlike statutes that mandate some sort of warning before arrest, such as failure-to-move-on statutes, this section gives violators all the warning to which they are constitutionally entitled. Smith-Caronia v. United States, App. D.C., 714 A.2d 764 (1998).

Cited in Darby v. United States, App. D.C., 681 A.2d 1156 (1996), cert. denied, 519 U.S. 1034, 117 S. Ct. 596, 136 L. Ed. 2d 524 (1996); Thompson v. United States, App. D.C., 690 A.2d 479 (1997).

§ 9-130.1. Escape from juvenile facilities.

* * * * *

(July 3, 1956, ch. 508, § 1a, as added May 15, 1993, D.C. Law 9-272, § 106, 40 DCR 796; May 16, 1995, D.C. Law 10-255, § 13, 41 DCR 5193.)

Effect of amendments.

D.C. Law 10-255 validated a previously made spelling correction.

Legislative history of Law 10-255. — Law 10-255, the "Technical Amendments Act of 1994," was introduced in Council and assigned Bill No. 10-673, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 21, 1994, and July 5, 1994, respectively. Signed by the Mayor on July 25, 1994, it was assigned Act No. 10-302 and transmitted to both Houses of Congress for its review. D.C. Law 10-255 became effective May 16, 1995.

Editor's notes. — D.C. Act 10-302, which affected this section as set out in the 1995 Replacement Volume, became Law 10-255, effective May 16, 1995. The historical citation for this section and notes relating to D.C. Law 10-255 have been set out herein to clarify the Law number and effective date of that act.

CHAPTER 2. CONSTRUCTION OF PUBLIC BUILDINGS.

§ 9-219. Program of construction to meet capital needs authorized; contents.

Appropriations authorized. — Public Law 104-194, 110 Stat. 2362, the District of Columbia Appropriations Act, 1997, provided for construction projects an increase of $46,923,000 (including an increase of $34,000,000 for the highway trust fund, reallocations and rescissions for a net rescission of $120,496,000 from local funds appropriated under this heading in prior fiscal years and an additional $133,419,000 in Federal funds), as authorized by §§ 43-1512 through 43-1519; §§ 43-1524, 43-1527 and 43-1654; and §§ 9-219 and 47-3404; including acquisition of sites, preparation of plans and specifications, conducting prelim-

inary surveys, erection of structures, including building improvement and alteration and treatment of grounds, to remain available until expended: Provided, That funds for use of each capital project implementing agency shall be managed and controlled in accordance with all procedures and limitations established under the Financial Management System: Provided further, That all funds provided by this appropriation title shall be available only for the specific projects and purposes intended: Provided further, That notwithstanding the foregoing, all authorizations for capital outlay projects, except those projects covered by the first sentence of section 23(a) of the Federal-Aid Highway Act of 1968, approved August 23, 1968 (82 Stat. 827; Public Law 90-495; D.C. Code, sec. 7-134, note), for which funds are provided by this appropriation title, shall expire on September 30, 1998, except authorizations for projects as to which funds have been obligated in whole or in part prior to September 30, 1998: Provided further, That upon expiration of any such project authorization the funds provided herein for the project shall lapse.

CHAPTER 3. REPAIRS AND IMPROVEMENTS.

§ 9-302. Inspection of public buildings for lead paint — Required.

Cross references. — For legislation allowing the Mayor to randomly and periodically inspect any and all lead-based paint activities in the District, and all pertinent records, documents, or data compilations, for the purpose of ensuring compliance with the Lead-Based Paint Abatement and Control Act of 1996, see § 6-997.9.

CHAPTER 4. SALE OF PUBLIC LANDS.

§ 9-401. Authorization; description of property; submission and approval of resolution; reacquisition rights; notice.

* * * * *

(g) For real property under the jurisdiction of the Board of Education ("Board") that the Board has determined to be no longer needed for educational purposes and for which jurisdiction has been transferred by the Board to the Mayor for disposal in accordance with the provisions of this chapter, the Mayor shall submit to the Council a report on whether the Mayor intends for the property to be used by another agency of the District government. The report shall be submitted to the Council by the Mayor within 90 days of the transfer of the property to the Mayor by the Board. If the report is not submitted to the Council within the 90-day period, the Mayor shall dispose of the property in accordance with the provisions of this chapter and shall transmit to the Council the resolution required by subsection (b) of this section within 180 days of the date of the transfer of the property to the Mayor by the Board.

(h) Notwithstanding any other provision of law, or any rule of law, the Board is authorized to sell and convey the property located at 13th and K Streets,

N.W., Lot 808, Square 285, commonly referred to as the Franklin School ("Franklin") to the H Street Community Development Corporation ("H Street"), and to enter into and execute all agreements necessary to consummate this sale, provided that the Board and H Street have entered into a contract specifying that H Street shall resell and reconvey Franklin to the District of Columbia, for the use of the Board, for an amount equal to the price for which H Street purchased Franklin, once renovations have been completed and all of the Board's outstanding debts to H Street related to the renovation of Franklin have been discharged. The Board is further authorized and directed to enter into and execute all agreements necessary to consummate the repurchase of Franklin within 90 days of the completion of the renovations and the discharge of the Board's debts for said renovation.

(i) The Board is authorized to expend an amount not to exceed $4 million for the renovation of Rabaut and 2 other schools for District of Columbia Public Schools administrative offices, excluding Franklin; provided, however, that if these renovation costs are likely to exceed $4 million, the Board must come back to the Council for approval of additional expenditures of appropriated operating funds for these purposes.

(j) All District fees and taxes associated with the Board's sale and repurchase of Franklin, and H Street's ownership and renovation of Franklin, shall be waived.

(k) The contractor hired by the Board shall provide an opportunity for students from the District of Columbia Public Schools to participate in vocational training programs with employment opportunities with this renovation project.

* * * * *

(Apr. 18, 1996, D.C. Law 11-110, § 21, 43 DCR 530.)

Cross references.

For exemptions from leasing and property laws, see § 24-495.5

For provisions regarding the disposition of certain school property, see § 47-392.25.

Effect of amendments.

D.C. Law 11-110 validated previously made stylistic changes in (g) through (k).

Temporary amendment of section. — Section 3 of D.C. Law 12-198 inserted (d-1) to read as follows:

"(d-1) Notwithstanding subsection (d) of this section, the time period within which the Mayor may dispose of the property located on lot 45, in square 272 at 13th Street, 12th Street and W Street in N.W. (Ward 1), known as the old Children's Hospital, to Donnetelli & Klein, Inc. and the property located on lots 227 and 900 in square 4107, and lots 826 and 827 in square 4003 on W Street, N.E., (Ward 5) to Crane Rental Company is extended from June 4, 1998, to December 4, 1998."

Section 5(b) of D.C. Law 12-198 provided that the act shall expire after 225 days of its having taken effect.

Section 2 of D.C. Law 12-223 inserted (d-2) to read as follows:

"(d-2) Notwithstanding subsection (d) of this section, the time period within which the Mayor may dispose of the property located on:

"(1) The portion of Lot 835 in Square 525 bounded by New York Avenue, N.W., Square 556, L Street, N.W., and the Center Leg Freeway and the portion of Lot 835 in Square 525 bounded by the Center Leg Freeway, L Street, N.W., and 4th Street, N.W.;

"(2) The portion of Lot 838 in Square 558 bounded by L Street, N.W., New Jersey Avenue, N.W., K Street, N.W., and Center Leg Freeway; and

"(3) Lot 1 and the portions of Lots 828 and 831 in Square 526 bounded by L Street, N.W., the Center Leg Freeway, K Street, N.W., and the western lots in Square 526 to the Golden Rule Plaza, Inc., is extended from November 7, 1998 to November 7, 2000."

Section 4(b) of D.C. Law 12-223 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments.

For temporary amendment of section, see §§ 2(a) and 3 of the Extension of Time to Dispose of District Owned Surplus Real Prop-

erty Revised Emergency Amendment Act of 1998 (D.C. Act 12-441, September 3, 1998, 45 DCR 6515).

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendments Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 12-198. — Law 12-198, the "Extension of Time to Dispose of District Owned Surplus Real Property Revised Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-750. The Bill was adopted on first and second readings on July 30, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 8, 1998, it was assigned Act No. 12-475 and transmitted to both Houses of Congress for its review. D.C. Law 12-198 became effective on March 26, 1999.

Legislative history of Law 12-223. — Law 12-223, the "Disposal of District Owned Surplus Real Property Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-842. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 9, 1998, it was assigned Act No. 12-538 and transmitted to both Houses of Congress for its review. D.C. Law 12-223 became effective on April 13, 1999.

Oyster Elementary School Construction and Revenue Bonds. — D.C. Law 12-174, the Oyster Elementary School Construction and Revenue Bond Act of 1998, effective October 21, 1998, pursuant to § 169 of Pub. Law. 105-277, authorized the demolition of the James F. Oyster Elementary School and the construction of a new school, the lease or conveyance of a portion of the Oyster School site to a private developer, and the funding for construction of the new Oyster School facility through the issuance of revenue bonds by the District for the benefit of the District of Columbia Public Schools, with the payments on such revenue bonds secured through payment by the developer of a payment in lieu of taxes.

Glenn Dale Hospital Site Sale Approval Resolution of 1994. — Pursuant to Proposed Resolution 11-17, deemed approved January 7, 1995, Council approved the sale of the Glenn Dale Hospital Site.

Transfer of Lot 40 in Square 454 Emergency Approval Resolution of 1995. — Pursuant to Resolution 11-150, effective October 10, 1995, the Council approved the transfer of certain real property owned by the District of Columbia Government, further described as Lot 40 in Square 454, a portion of which to be transferred to the District of Columbia Redevelopment Land Agency and the remaining portion to be used or disposed of in accordance with District of Columbia law.

Request for Proposals to Solicit Development of the Georgetown Incinerator Property, Lot 824 in Square 1189, Approval Emergency Resolution of 1996. — Pursuant to Resolution 11-478, effective July 17, 1996, Council approved, on an emergency basis, the request for proposals soliciting proposals to develop the Georgetown Incinerator Property located in the Georgetown Waterfront area and legally described as Lot 824, Square 1189.

Approval of the Negotiated Disposition of the "Golden Rule Property" to Golden Rule Plaza, Inc., and Reorganization Plan No. 8 of 1996 for the Business of Public Management Disapproval Resolution of 1996. — Pursuant to Resolution 11-569, effective November 7, 1996, Council approved a negotiated disposition and redevelopment of the "Golden Rule Property" to Golden Rule Plaza, Inc., and to disapprove Reorganization Plan No. 8 of 1996 for the business of public management.

Negotiated Disposition of Property Located at 1301 Upshur Street, N.W., to the National Baptist Convention USA Housing Inc., Twenty-Seven, Approval Resolution of 1996. — Pursuant to Resolution 11-632, effective December 3, 1996, Council approved the negotiated disposition of property located in Square 2820, Lot 1, at 1301 Upshur Street, N.W., to the National Baptist Convention USA Housing Inc., Twenty-Seven, for the development of the "Upshur House" in Ward Four.

Request for Offers for the Disposition for the Roosevelt Apartment for Senior Citizens, 2101 16th Street, N.W., Lot 802, in Square 188, Approval Resolution of 1996. — Pursuant to Resolution 11-633, effective December 3, 1996, Council approved the Request for Offers for the disposition of the Roosevelt Apartment for Senior Citizens located at 2101 16th Street, N.W., and legally described as Lot 802, Square 188, in Ward 1.

Unsolicited Proposal to Develop the Anacostia Northern Gateway Project Approval Resolution of 1997. — Proposed Resolution 12-0111, the "Unsolicited Proposal to Develop the Anacostia Northern gateway project Approval Resolution of 1997" was deemed approved, effective Feb. 12, 1997.

Extension of Time To Dispose of Square 4107, Lots 227 and 900 and Square 4103, Lots 826 and 827 to Crane Rental Company Approval Resolution of 1998. — Pursuant to Resolution 12-(PR12-721), effective May 29, 1998, the Council approved a request for additional time for the disposition of property on W Street, N.E., Square 4107, Lots 227 and 900 and Square 4103, Lots 826 and 827, to Crane Rental Company.

Disposition of Lots 90, 91, 92, 105, 106 and 125 in Square 2560 to Adams Morgan Development Company Limited Partnership Approval Resolution of 1998. — Pursuant to Resolution 12-703, effective October 6, 1998, the Council approved the disposition of Lots 90, 91, 92, 105, 106 and 125 in Square 2560 to Adams Morgan Development Company Limited Partnership.

Disposition of Lot 824 in Square 1189 to Millennium Georgetown Development L.L.C. Approval Resolution of 1998. — Pursuant to Resolution 12-704, effective October 6, 1998, the Council approved the disposition of Lot 824 in Square 1189 to Millennium Georgetown Development L.L.C.

Authorization to Sell Lots 804, 805 and 806 in Square 3587 Approval Resolution of 1998. — Pursuant to Resolution PR 12-824, effective December 10, 1998, the Council authorized the sale of Lots 804, 805, and 806 in Square 3587 to existing tenants.

Disposition of Lot 41 in Square 484 Emergency Conditional Approval Resolution of 1998. — Pursuant to Resolution 12-677, effective August 24, 1998, the Council approved, on an emergency basis, the disposition of Lot 41 in Square 454, located at 614 H Street, N.W., as surplus property.

Disposition of Lot 0061 in Square 555 Emergency Approval Resolution of 1998. — Pursuant to Resolution 12-800, effective December 1, 1998, the Council approved, on an emergency basis, the disposition of Lot 0061 in Square 555, real property owned by the District government, as surplus property in accordance with District of Columbia law.

Public Offering Document to Receive Proposals to Develop the McMillan Sand Filter Plan Site Disapproval Resolution of 1998 (PR12-981). — Pursuant to Resolution 13-31, effective February 2, 1999, the Council disapproved an offering document to receive proposals to develop the McMillan Sand Filter Plant Site, located in Ward 5.

Request for Offers for the Disposition of the Roosevelt Apartment, 2101 - 16th Street, N.W., Lot 802 in Square 188, Approval Resolution of 1999 (PR12-1115). — Pursuant to Resolution 13-32, effective February 2, 1999, the Council reviewed and approved the Request for Offers for disposition of the Roosevelt Apartment, located at 2101 16th Street, N.W., and legally described as Lot 802 in Square 188, in Ward One.

§ 9-402. Expenses of sale; deposit of net proceeds.

* * * * *

(b)(1) There is established within the District Treasury a fund to be known as the Board of Education Real Property Improvement and Maintenance Fund ("Fund"). Subject to paragraph (6) of this subsection, the District of Columbia Financial Responsibility and Management Assistance Authority shall administer the Fund and receive all payments into the Fund that are required by law. The Fund shall be maintained as an enterprise fund as defined in § 47-373(2)(D), and shall be used exclusively for the maintenance, improvement, rehabilitation, and repair of buildings and grounds under the jurisdiction of the Board that are used for educational purposes for public school students in the District.

* * * * *

(5) Repealed.

(6) Upon the establishment of an agency or authority within the District of Columbia government to administer a public schools facilities revitalization plan pursuant to § 31-2853.52(a)(2), such agency or authority shall administer the Fund and receive all payments into the Fund that are required by law. (Aug. 5, 1939, 53 Stat. 1211, ch. 449, § 2; 1973 Ed., § 9-302; Sept. 11, 1990, D.C. Law 8-158, § 2(b), 37 DCR 4167; Sept. 30, 1996, 110 Stat. 3009 [1477], Pub. L. 104-208, § 5206(b).)

Effect of amendments. — Public Law 104-208, in (b) rewrote the second and third sentences in (1), repealed (5), and added (6).

CHAPTER 7. JOHN A. WILSON BUILDING.

Subchapter II. John A. Wilson Building Foundation.

Subchapter I. John A. Wilson Building Designation.

§ 9-701. John A. Wilson Building designated.

Section references. — This section is referred to in § 9-731.

Unsolicited Proposal to Enter Into a Memorandum or Understanding to Authorize the Washington Development Group, Inc., to Submit a Development Proposal for the Restoration and Renovation of the Wilson Building Resolution of 1995. — Pursuant to Resolution 11-97, effective July 11, 1995, the Council approved an unsolicited proposal for a memorandum of understanding to authorize the development of a proposal for the restoration and renovation of the John A. Wilson Building.

Endorsement of the Establishment of the John A. Wilson Building Foundation and Washington Development Group, Inc., Development Plan Conditional Approval Resolution of 1995. — Pursuant to Resolution 11-172, effective November 7, 1995, the Council endorsed the formation of the John A. Wilson Building Foundation, a nonprofit organization to raise funds to pay for the renovation and restoration, or the full municipal use, of the John A. Wilson Building, and conditionally approved the development plan for the renovation and restoration of the John A. Wilson Building submitted by the Washington Development Group, Inc.

General Services Administration Lease Approval Emergency Resolution of 1996. — Pursuant to Resolution 11-470, effective July 17, 1996, Council approved, on an emergency basis, the lease between the Council of the District of Columbia and the United States General Services Administration for office space in the John A. Wilson Building to generate funds for the renovation and restoration of the John A. Wilson Building.

Subchapter II. John A. Wilson Building Foundation.

§ 9-731. Findings.

The Council of the District of Columbia finds that:

(1) Pursuant to § 9-701, the Council has the exclusive authority to determine the use, management, maintenance, operation, repair, renovation, security, lease, and sale or other disposition of the building located at 1350 Pennsylvania Avenue, N.W., known as the John A. Wilson Building ("Wilson Building").

(2) The Wilson Building is the traditional seat of local government located on Pennsylvania Avenue, the "Main Street" of the Nation's Capital, and a source of pride and hope for our District residents.

(3) The Wilson Building is in need of renovation and restoration and contains environmental conditions which should be eliminated to provide a safe and healthy working environment and to ensure compliance with all federal and local building regulations.

(4) Because of the current fiscal state of the District government, funds are not available to make expenditures estimated at $47.1 million to $60 million to renovate and restore the Wilson Building. (Apr. 9, 1997, D.C. Law 11-180, § 2, 43 DCR 4246.)

Emergency act amendments. — For temporary addition of subchapter, see §§ 2 through 8 of the Establishment of the John A. Wilson Building Foundation Emergency Act of 1995 (D.C. Act 11-161, November 27, 1995, 42 DCR 6781), §§ 2 through 8 of the Establishment of the John A. Wilson Building Foundation Congressional Review Emergency Act of 1996 (D.C. Act 11-209, February 14, 1996, 43 DCR 798), § 2 through 7 of the John A. Wilson Building Foundation Congressional Review Emergency Act of 1996 (D.C. Act 11-406, October 24, 1996, 43 DCR 5814), and § 2 through 7 of the Establishment of the John A. Wilson Building Foundation Congressional Adjournment Emergency Act of 1997 (D.C. Act 12-8, March 3, 1997, 44 DCR 1625).

Legislative history of Law 11-180. — Law 11-180, the "John A. Wilson Building Foundation Act," was introduced in Council and assigned Bill No. 11-503, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 22, 1996, it was assigned Act No. 11-331 and transmitted to both Houses of Congress for its review. D.C. Law 11-180 became effective on April 9, 1997.

§ 9-732. Establishment of the Wilson Building Foundation.

(a) There is established in the District of Columbia the John A. Wilson Building Foundation ("Foundation"), a private-public nonprofit corporation.

(b) The purposes of the Foundation are:

(1) To develop a long-range plan for the use of the Wilson Building by the District government and by the public; and

(2) To develop and implement a fundraising plan to pay for the renovation and restoration of the Wilson Building. (Apr. 9, 1997, D.C. Law 11-180, § 3, 43 DCR 4246.)

Emergency act amendments. — See note to § 9-731.

Legislative history of Law 11-180. — See note to § 9-731.

§ 9-733. Special Trust Fund.

(a) There is established a special trust fund to be known as the Renovation Development Trust Fund ("Fund").

(b) The Foundation shall be responsible for administering the Fund.

(c) The monies deposited into the Fund shall not be a part of, nor lapse into, the General Fund of the District.

(d) Monies in the Fund may derive from any of the following sources:

(1) Private donations;

(2) Federal grants;

(3) Other funds received by the Foundation; and

(4) Interest or other investment earnings on monies deposited in the Fund.

(e) The Foundation shall ensure that monies deposited in the Fund earn the highest and safest rate of return as practicable.

(f) The Fund shall be used for the following purposes:

(1) As collateral or direct financing for the complete renovation and restoration of the Wilson Building; and

(2) To buy out the remaining balance of any loan negotiated between Washington Development Group, Inc., and any financial institution for the renovation and restoration of the Wilson Building, as the Council may direct pursuant to the Endorsement of the Establishment of the John A. Wilson Building Foundation and Washington Development Group, Inc., Development Plan Conditional Approval Resolution of 1995 (Resolution 11-172; 42 DCR 6428), effective November 24, 1995.

(g) No more than 15% of the monies deposited in the Fund may be used by the Foundation for operating expenses of the Foundation, including the cost of maintaining the Fund.

(h) If within one year of April 9, 1997, the Foundation has not raised over $1 million in funds, all funds remaining in the Fund at that time shall be returned to the donors or grantors on a pro rata basis minus the administrative costs limited by subsection (g) of this section associated with returning the monies. (Apr. 9, 1997, D.C. Law 11-180, § 4, 43 DCR 4246.)

Section references. — This section is referred to in § 9-736.

Emergency act amendments. — See note to § 9-731.

Legislative history of Law 11-180. — See note to § 9-731.

§ 9-734. Establishment of Board of Directors.

(a) A Board of Directors ("Board") is established to meet the objectives of the Foundation and to administer the Fund.

(b) The Board shall be composed of residents of the District of Columbia who are collectively representative of the geographical, ethnic, economic, and social diversity of the District of Columbia. Advisory committees and subcommittees that may be established by the Foundation may be composed of residents and nonresidents of the District.

(c) The Board shall be composed of the following members:

(1) One member appointed by each member of the Council, with the chairperson of the Board appointed by the Chairman of the Council;

(2) The Secretary to the Council;

(3) The Archivist of the District of Columbia;

(4) A representative of the Historical Society of Washington, D.C.;

(5) A representative of the D.C. Preservation League;

(6) A representative of the National Trust for Historic Preservation;

(7) A representative designated by the Mayor of the District of Columbia; and

(8) A representative designated by the John A. Wilson family.

(d) The Board shall:

(1) Have the power to adopt, amend, or repeal by-laws for operation of the Foundation;

(2) Meet not less than quarterly at times to be determined;

(3) Prepare and submit to the Council quarterly reports on the progress on the Foundation's fundraising;

(4) Be authorized to hire staff; and

(5) Be authorized to exercise all powers conferred upon a nonprofit corporation pursuant to Chapter 5 of Title 29. (Apr. 9, 1997, D.C. Law 11-180, § 5, 43 DCR 4246.)

Emergency act amendments. — See note to § 9-731.

Legislative history of Law 11-180. — See note to § 9-731.

§ 9-735. Administration of the foundation.

The Secretary to the Council is responsible for the administration of the Foundation. No more than 15% of the total funds raised in any given year can be used for the administrative support, including staff, supplies, and promotional activities of the Foundation. (Apr. 9, 1997, D.C. Law 11-180, § 6, 43 DCR 4246.)

Emergency act amendments. — See note to § 9-731.

Legislative history of Law 11-180. — See note to § 9-731.

§ 9-736. Sunset provision.

If the Foundation has returned monies deposited in the Fund pursuant to § 9-733(h), the Foundation shall cease all operations. (Apr. 9, 1997, D.C. Law 11-180, § 7, 43 DCR 4246.)

Emergency act amendments. — See note to § 9-731.

Legislative history of Law 11-180. — See note to § 9-731.

CHAPTER 8. WASHINGTON CONVENTION CENTER AUTHORITY.

Subchapter I. General Provisions.

Subchapter II. Miscellaneous.

Subchapter I. General Provisions.

§ 9-802. Definitions.

For the purposes of this chapter, the term:

* * * * *

(4) "Dedicated taxes" means those taxes imposed pursuant to §§ 47-2002.2 and 47-2202.1, plus interest and penalties related thereto.

* * * * *

(Aug. 12, 1998, D.C. Law 12-142, § 2(a), 45 DCR 4826.)

Effect of amendments. — D.C. Law 12-142, effective August 12, 1998, rewrote (4).

Legislative history of Law 12-142. — Law 12-142, the "Washington Convention Center Authority Financing Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-379, which was referred to the Committee on Economic Development and the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 2, 1998, and June 16, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-402 and transmitted to both Houses of Congress for its review. The legislation became effective on August 12, 1998, the date that the President of the United States signed P.L. 105-227, which waived the 30-day Congressional review period for this law.

Effective date of D.C. Law 12-142. — Section 2 of Pub. L. 105-227, 112 Stat. 1515, provides that D.C. Law 12-142 shall take effect on August 12, 1998.

Application of Law 12-142. — Section 4 of D.C. Law 12-142 provides that § 2(a) shall apply as of October 1, 1998.

§ 9-803. Establishment of the Washington Convention Center Authority; purpose of the Authority.

Section references. — This section is referred to in § 1-633.7.

§ 9-804. General powers of Authority.

In addition to the general delegation of powers contained in § 9-810 and subject to the limitations contained in § 9-805, the Authority shall possess the following powers:

* * * * *

(12) To sell or dispense, upon obtaining a license from the Alcoholic Beverage Control Board pursuant to § 25-110, or to permit others to sell or dispense, upon obtaining a license from the Alcoholic Beverage Control Board, alcoholic beverages for consumption on the premises, but only upon and within the territorial limits of the property of or under the management and control of the Authority. The Authority shall not have the power to sell or dispense alcoholic beverages in unbroken packages for the purpose of permitting the unbroken packages to be carried off the premises. The Authority shall determine and regulate by resolution the conditions under which the sales or dispensing of alcoholic beverages for consumption on the premises shall be made or shall be permitted;

(13) To do all things necessary or convenient to carry out the powers expressly provided by this chapter; and

(14) Subject to Council approval by resolution, to enter into agreements or arrangements to limit interest rate risk, to facilitate the issuance of variable rate obligations or obligations with an effective variable rate and to better manage assets; the agreements or arrangements shall only be entered into in conjunction with the issuance of bonds, notes or other obligations by the Authority; and the Authority shall retain the right to discontinue or terminate any such agreement when in the reasonable opinion of the Chief Financial Officer of the Authority it is in the best interest of the Authority. (Sept. 28, 1994, D.C. Law 10-188, § 203, 41 DCR 5333; Aug. 12, 1998, D.C. Law 12-142, § 2(b), 45 DCR 4826.)

Effect of amendments. — D.C. Law 12-142, effective August 12, 1998, added (14).

Legislative history of Law 12-142. — See note to § 9-802.

Effective date of D.C. Law 12-142. — See note to § 9-802.

§ 9-805. Limitations on Authority's powers.

Section references. — This section is referred to in §§ 1-1177.1, 9-803, 9-804, 9-809, 9-811, and 9-814.

Washington Convention Center Authority Dedicated Tax Revenue Bond Resolution of 1998. — Pursuant to Resolution 12-591, effective July 7, 1998, the Council approved the Washington Convention Center Authority's proposal for the issuance of Dedicated Tax Revenue Bonds to finance a New Convention Center and to authorize an increase in the capital replacement reserve and the operating reserve.

§ 9-806. Establishment of Board of Directors.

(a)(1) The Authority shall be governed by a Board of Directors ("Board") which shall be comprised of 9 members, one of whom shall be the Chief Financial Officer of the District of Columbia and one of whom shall be designated by the Mayor, both of whom shall serve as ex-officio voting members of the Board.

* * * * *

(b)(1) All Board terms shall be 4-year terms. No Board member shall serve more than 2 consecutive terms.

(2) Repealed.

(c) Repealed.

* * * * *

(Aug. 12, 1998, D.C. Law 12-142, § 2(c), 45 DCR 4826.)

Effect of amendments. — D.C. Law 12-142, effective August 12, 1998, in (a)(1), deleted "Except as provided in § 9-818(b)" preceding "The Authority", inserted "of Columbia" following "District", substituted "designated by the Mayor" for "Director of the Office of Tourism and Promotions", and substituted "one" for "1" throughout; rewrote (b)(1); and repealed (b)(2) and (c).

Legislative history of Law 12-142. — See note to § 9-802.

Effective date of D.C. Law 12-142. — See note to § 9-802.

§ 9-807. Duties of the Board.

* * * * *

(b) The Board shall prepare and submit to the Mayor an operating budget for fiscal year 1995 and all subsequent fiscal years.

(1) For the purposes of this subsection, the term "operating budget" shall include only funds for personnel, show operations, travel, development, marketing service contracts entered into pursuant to § 9-809.1, and Board expenses.

* * * * *

(h-1)(1) If the guaranteed maximum price required by § 9-805 requires an adjustment in the final financial requirements and feasibility analysis required by subsection (h) of this section, the Board shall submit revised

financial requirements for the construction of the New Convention Center to the Council and the Mayor.

(2) This subsection shall apply as of February 27, 1997.

* * * * *

(Aug. 12, 1998, D.C. Law 12-142, § 2(d), 45 DCR 4826.)

Effect of amendments. — D.C. Law 12-142, effective August 12, 1998, inserted "marketing service contracts entered into pursuant to § 9-809.1" in (b)(1); and inserted (h-1).

Temporary amendment of section. — Section 2 of D.C. Law 11-262 amended (h) to read as follows:

* * * * *

"(h) The Board shall submit final financial requirements and a feasibility analysis for the construction of the new convention center to the Mayor and Council within 29 months of September 28, 1994."

Section 4(b) of D.C. Law 11-262 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2(a) of the Washington Convention Center Authority Act of 1994 Emergency Amendment Act of 1996 (D.C. Act 11-393, October 1, 1996, 43 DCR 5430), and § 2(a) of the Washington Convention Center Authority Act of 1994 Time Extension Emergency Act of 1996 (D.C. Act 11-509).

Section 4 of D.C. Act 11-393 provides for the application of the act.

Legislative history of Law 11-262. — Law 11-262, the "Washington Convention Center Authority Act of 1994 Time Extension Temporary Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-986. The Bill was adopted on first and second readings on December 3, 1996, and January 7, 1997, respectively. Signed by the Mayor on January 23, 1997, it was assigned Act No. 11-529 and transmitted to both Houses of Congress for its review. D.C. Law 11-262 became effective on April 25, 1997.

Legislative history of Law 12-142. — See note to § 9-802.

Effective date of D.C. Law 12-142. — See note to § 9-802.

Application of Law 12-142. — Section 4 of D.C. Law 12-142 provides that § 2(d)(1) of the act shall apply as of October 1, 1998.

§ 9-809. Washington Convention Center Authority Fund; transfer and pledge of revenues.

* * * * *

(b) Dedicated taxes collected by the Mayor, as an agent for the Authority, and the monies in the Fund shall not be a part of, nor lapse into, the General Fund of the District, except as provided in § 9-814.

(c)(1) Any and all dedicated taxes collected by the Mayor as an agent for the Authority shall be transferred upon receipt to the Fund for the payment of the costs of the New Convention Center, expenses necessary for debt service, reserve funds, repair, maintenance, marketing service contracts and all other expenses of operating and managing the Authority.

(2) The Board shall submit for Council review the detailed guidelines established by the Authority stating the types of expenditures permissible under Authority policy.

* * * * *

(Aug. 12, 1998, D.C. Law 12-142, § 2(e), 45 DCR 4826.)

Section references. — This section is referred to in §§ 1-2293.1, 9-805, 47-1807.2a, 47-1808.3a, 47-2002.2, and 47-3206.

Effect of amendments. — D.C. Law 12-142, effective August 12, 1998, rewrote (b) and (c).

Legislative history of Law 12-142. — See note to § 9-802.

Effective date of D.C. Law 12-142. — See note to § 9-802.

References in text. — The reference to § 9-605, which is referred to in (f), should read: "section 6 of the Washington Convention Center Management Act of 1979, effective November 3, 1979."

Expenditures for Convention Center activities. — For provisions permitting the Washington Convention Center Authority to expend revenues for Convention Center activities, see § 47-396.1.

§ 9-809.1. Establishment of the Washington Convention Center Marketing Fund; marketing service contracts.

(a) There is established the Washington Convention Center Marketing Fund ("Marketing Fund") to be maintained by the Authority for the payment of marketing service contracts to promote conventions, tourism, and leisure travel in the District.

(b) Monies in the Marketing Fund shall not be a part of, nor lapse into, the General Fund of the District, except as provided in § 9-814.

(c) The total dollar amount of the marketing service contracts shall be based on, as nearly as practical, an amount equal to not less than 17.4% of the amount collected each year from the tax imposed by §§ 47-2002.2(1) and 47-2202.1(1). The Authority shall deposit monthly an amount equal to not less than 17.4% of the amount as collected from the tax imposed by §§ 47-2002.2(1) and 47-2202.1(1) into the Marketing Fund.

(d) Where applicable, the marketing service contracts shall include information on general and specific responsibilities, performance standards, pricing, financial reports and data, associated services, cooperative efforts with the Authority and the District, duration and termination of agreements, proprietary work product, notices, and remedies. The Authority shall have the right at any time to terminate any marketing service contract for cause. In the event of termination for cause by the Authority, the services to be performed under the terms of the terminated marketing service contract shall be procured by request for proposals made pursuant to rules for the procurement of goods and services adopted by the Board.

(e) The marketing service contracts shall include contracts with the following entities:

(1) The Washington Convention and Visitors Association pursuant to which the Washington Convention and Visitors Association shall be designated as the primary contractor to promote conventions and group tourism in the District;

(2) The D.C. Committee to Promote Washington pursuant to which the D.C. Committee to Promote Washington shall be designated as the primary contractor to conduct leisure travel advertising, marketing, and promotions in the District;

(3) The D.C. Chamber of Commerce pursuant to which the D.C. Chamber of Commerce shall be designated as the primary contractor to promote neighborhood and cultural tourism in the District and promote participation by local, small, and minority businesses in the hospitality industry; and

(4) The Greater Washington Ibero American Chamber of Commerce for the purpose of pursuit of special projects, as designated by the Authority.

(f) The obligation of the Authority to make any payment pursuant to any marketing service contract and the amount thereof shall be subject, and

subordinate, in all respects, to the obligation of the Authority to apply any amount deposited or required to be deposited in any fund or account established or maintained pursuant to any resolution, indenture, or trust agreement adopted by the Authority relating to any bonds, notes, or other obligations issued by the Authority pursuant to § 9-811 in accordance with the provisions of such resolution, indenture, or trust agreement.

(g) Any marketing contracts that exceed the specified dollar amounts contained in section III.A.1. or section 3(a)(1) of the Washington Convention Center Contract Nos. 1-99, 2-99, 3-99, and 4-99, as approved by the Council, shall be submitted to the Council for a 60-day period of review and approval. No additional marketing contracts shall be approved by the Authority without Council review and approval. (Sept. 28, 1994, D.C. Law 10-188, § 208a, as added Aug. 12, 1998, D.C. Law 12-142, § 2(f), 45 DCR 4826; Apr. 13, 1999, D.C. Law 12-219, § 2, 46 DCR 288.)

Effect of amendments. — D.C. Law 12-142, effective August 12, 1998, added this section.

D.C. Law 12-219 added (g).

Temporary amendment of section. — Section 3 of D.C. Law 12-197 added (g).

Section 5(b) of D.C. Law 12-197 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 3 of the Sex Offender Registration Risk Assessment Clarification and Convention Center Marketing Service Contracts Emergency Amendment Act of 1998 (D.C. Act 12-427, July 29, 1998, 45 DCR 5725), § 3 of the Sex Offender Registration Risk Assessment Clarification and Convention Center Marketing Service Contracts Emergency Amendment Act of 1998 (D.C. Act 12-508, November 4, 1998, 45 DCR 9174), and § 3 of the Sex Offender Registration Risk Assessment Clarification and Convention Center Marketing Service Contracts Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-9, February 8, 1999, 46 DCR 2317).

Section 5 of D.C. Act 12-508 provides for a retroactive application of the act.

Section 5 of D.C. Act 13-9 provides for a retroactive application of the act.

Legislative history of Law 12-142. — Law 12-142, the "Washington Convention Center Authority Financing Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-379, which was referred to the Committee on Economic Development and the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 2, 1998, and June 16, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-402 and transmitted to both Houses of Congress for its review. The legislation became effective on August 12, 1998, the date that the President of the United States signed P.L. 105-227, which waived the 30-day Congressional review period for this law.

Legislative history of Law 12-197. — Law 12-197, the "Sex Offender Registration Risk Assessment Clarification and Convention Center Marketing Service Contracts Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-699. The Bill was adopted on first and second readings on July 7, 1998, and September 22, 1998, respectively. Signed by the Mayor on October 8, 1998, it was assigned Act No. 12-474 and transmitted to both Houses of Congress for its review. D.C. Law 12-197 became effective on March 26, 1999.

Legislative history of Law 12-219. — Law 12-219, the "Washington Convention Center Authority Second Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-806, which was referred to the Committee on Economic Development. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 9, 1998, it was assigned Act No. 12-534 and transmitted to both Houses of Congress for its review. D.C. Law 12-219 became effective on April 13, 1999.

Effective date of D.C. Law 12-142. — See note to § 9-802.

Application of Law 12-142. — Section 4 of Law 12-142 provided that § 2(f) of the act shall apply as of October 1, 1998.

§ 9-810. Delegation of Council authority to issue bonds.

The Council delegates to the Authority the power of the Council under § 47-334, as amended by section 11508 of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (P. L.

105-33; 111 Stat. 773), to issue revenue bonds, notes, and other obligations to finance, refinance, or assist in the financing or refinancing of any undertakings of the New Convention Center pursuant to this chapter. (Sept. 28, 1994, D.C. Law 10-188, § 209, 41 DCR 5333; Aug. 12, 1998, D.C. Law 12-142, § 2(g), 45 DCR 4826.)

Effect of amendments. — D.C. Law 12-142, effective August 12, 1998, rewrote this section.

Legislative history of Law 12-142. — See note to § 9-809.1.

Effective date of D.C. Law 12-142. — See note to § 9-802.

§ 9-812. Terms for sale of bonds; additional bond and note provisions.

(a) The Authority may stipulate by resolution the terms for sale of its bonds in accordance with this chapter, including the following:

* * * * *

(2) The date a bond or note matures, provided that notes shall not mature later than 10 years from the date of original issuance and bonds shall not mature later than 34 years from the date of original issuance;

* * * * *

(Aug. 12, 1998, D.C. Law 12-142, § 2(h), 45 DCR 4826.)

Effect of amendments. — D.C. Law 12-142, effective August 12, 1998, substituted "34 years" for "30 years" in (a)(2).

Legislative history of Law 12-142. — See note to § 9-809.1.

Effective date of D.C. Law 12-142. — See note to § 9-802.

§ 9-814. Transfer of excess cash.

(a) If, at the end of a fiscal year, the balance of cash and investments of the Authority exceeds the balance of current liabilities, reserves, and any amounts that the Authority expects to apply to purchase or redeem its outstanding indebtedness during the upcoming fiscal year, the excess shall be transferred, in cash, to the General Fund of the District.

* * * * *

(c) Subject to Council approval by resolution, the Authority may increase the level of the reserves described in subsection (b) of this section or establish, fund, and maintain any other reserve or reserves if the Authority determines that such action is necessary to satisfy the bond-rating agencies or otherwise maintain the financial condition of the Authority. (Sept. 28, 1994, D.C. Law 10-188, § 213, 41 DCR 5333; Aug. 12, 1998, D.C. Law 12-142, § 2(i), 45 DCR 4826.)

Effect of amendments. — D.C. Law 12-142, effective August 12, 1998, inserted "and any amounts that the Authority expects to apply to purchase or redeem its outstanding indebtedness during the upcoming fiscal year" in (a); and rewrote (c).

Legislative history of Law 12-142. — See note to § 9-809.1.

Effective date of D.C. Law 12-142. — See note to § 9-802.

Washington Convention Center Authority Dedicated Tax Revenue Bond Resolution of 1998. — Pursuant to Resolution 12-591, effective July 7, 1998, the Council approved the Washington Convention Center Authority's proposal for the issuance of Dedicated Tax Revenue Bonds to finance a New Convention Center and to authorize an increase in the capital replacement reserve and the operating reserve.

§ 9-817. Merit personnel system inapplicable.

Chapter 6 of Title 1 shall not apply to employees of the Authority, except that subchapters V and XVIII of Chapter 6 of Title 1, shall apply. (Sept. 28, 1994, D.C. Law 10-188, § 216, 41 DCR 5333; Sept. 23, 1997, D.C. Law 12-22, § 2, 44 DCR 4168.)

Effect of amendments. — D.C. Law 12-22 added "except that Subchapters V and XVIII of Chapter 6 of Title 1, shall apply" to the end.

Emergency act amendments. — For temporary amendment of section, see § 2 of the Washington Convention Center Authority Collective Bargaining Emergency Amendment Act of 1997 (D.C. Act 12-78, June 4, 1997, 44 DCR 3351).

Legislative history of Law 12-22. — Law 12-22, the "Washington Convention Center Authority Collective Bargaining Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-173. The Bill was adopted on first and second readings on May 6, 1997, and June 3, 1997, respectively. Signed by the Mayor on June 18, 1997, it was assigned Act No. 12-99 and transmitted to both Houses of Congress for its review. D.C. Law 12-22 became effective on September 23, 1997.

§ 9-818. Transition provisions; establishment of Interim Board of Directors.

Repealed.

(Sept. 28, 1994, D.C. Law 10-188, § 213, 41 DCR 5333; Aug. 12, 1998, D.C. Law 12-142, § 2(j), 45 DCR 4826.)

Legislative history of Law 12-142. — See note to § 9-809.1.

Effective date of D.C. Law 12-142. — See note to § 9-802.

Subchapter II. Miscellaneous.

§ 9-831. Audit of accounts and operations.

(a) On or before July 1 of each year, the District of Columbia Auditor, pursuant to the Auditor's duties under § 47-117(b), shall audit the accounts and operations of the Authority.

(b) On or before July 15 of each year in which there is outstanding any indebtedness issued by the Authority pursuant to this chapter, the District of Columbia Auditor shall prepare and deliver to the Mayor, the Council, the Chief Financial Officer of the District of Columbia, and the Chairman of the Authority a certification relating to the upcoming fiscal year of the District as to the sufficiency of the sum of the projected revenues from the following:

(1) The taxes imposed pursuant to §§ 47-2002.2 and 47-2202.1, and transferred to the Authority by the Mayor pursuant to §§ 47-2002.3 and 47-2202.2, as such tax revenues are estimated by the Office of Tax and Revenue for such upcoming fiscal year, which estimates shall be delivered by the Office of Tax and Revenue to the Authority on or prior to July 1 of such year, excluding from such estimate any amounts relating to any surtax imposed pursuant to subsection (c) of this section;

(2) The projected operating revenues of the Authority for such upcoming fiscal year contained in the most recent multiyear financial plan of the Board submitted pursuant to § 9-807(g); and

(3) Any amounts on deposit in any reserve fund or account (other than any debt service reserve fund or account for indebtedness of the Authority), which are in excess of the required minimum balance for such fund or account, as certified by the Authority, to meet the sum of (i) projected operating and debt service expenditures and reserve requirements (other than amounts included in clause (ii) below) of the Authority for the upcoming fiscal year contained in the most recent multiyear financial plan of the Board submitted pursuant to § 9-807(g), and (ii) any amounts required, as certified by the Authority, to restore any reserves relating to indebtedness of the Authority to their required minimum balance.

(c) If the certification delivered pursuant to subsection (b) of this section indicates that such projected revenues for the upcoming fiscal year are insufficient to meet such projected expenditures and reserve requirements (other than amounts included in clause (ii) of subsection (b)(3) of this section) and payments required to restore reserves relating to indebtedness of the Authority to their minimum required balance for the upcoming fiscal year, the Mayor shall impose a surtax, to become effective on or before the first day of the upcoming fiscal year, on the tax imposed pursuant to §§ 47-2002.2(1) and 47-2202.1(1) in an amount equal to the difference between (i) the sum of the projected operating and debt service expenditures and reserve requirements (other than amounts included in clause (ii) of subsection (b)(3) of this section) and payments required to restore any reserves relating to indebtedness of the Authority to their minimum required balance, and (ii) the projected revenues described in subsection (b) of this section. Such surtax shall be effective only for such upcoming fiscal year. (Sept. 28, 1994, D.C. Law 10-188, § 305, as added Aug. 12, 1998, D.C. Law 12-142, § 2(k), 45 DCR 4826.)

Legislative history of Law 12-142. — Law 12-142, the "Washington Convention Center Authority Financing Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-379, which was referred to the Committee on Economic Development and the Committee on Finance and Revenue. The Bill was adopted on first and second readings on June 2, 1998, and June 16, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-402 and transmitted to both Houses of Congress for its review. The legislation became effective on August 12, 1998, the date that the President of the United States signed P.L. 105-227, which waived the 30-day Congressional review period for this law.

Effective date of D.C. Law 12-142. — Section 2 of Pub. L. 105-227, 112 Stat. 1515, provided that D.C. Law 12-142 shall take effect on August 12, 1998.

Application of Law 12-142. — Section 4 of Law 12-142 provided that § 2(k) of the act shall apply as of October 1, 1998.

Editor's notes. — Section 2(k) of D.C. Law 12-142, effective August 12, 1998, pursuant to § 2 of Pub. L. 105-227, 112 Stat. 1515, recodified and amended § 305 of D.C. Law 10-188 to be this section.

§ 9-832. Expiration provisions.

(a) Repealed.

(b) Sections 301, 302, 303, and 304 shall apply as of October 1, 1997. (Sept. 28, 1994, D.C. Law 10-188, § 306, 41 DCR 5333; Aug. 12, 1998, D.C. Law 12-142, § 2(l)(1), 45 DCR 4826.)

Effect of amendments. — D.C. Law 12-142 repealed (a).

References in text. — "Sections 301, 302, 303, and 304," referenced in (b), refer to §§ 301, 302, 303 and 304 of D.C. Law 10-188, effective September 28, 1994.

§ 9-833. Collection and transfer of taxes to Washington Convention Center Authority Fund.

(a) Notwithstanding any other law, surtaxes and dedicated taxes shall be collected by the Mayor, pursuant to §§ 47-1807.2(a)(4), 47-1807.2a, 47-1808.3(a)(4), 47-1808.3a, 47-2002.2, 47-2002.3, 47-2202.1, 47-2202.2, the provisions of which are incorporated by reference in this section, and transferred to the Washington Convention Center Authority Fund for the purposes set forth in § 9-809 until any of these provisions are repealed by legislation enacted after September 27, 1996.

(b) This section shall apply as of September 27, 1996. (Sept. 28, 1994, D.C. Law 10-188, § 307, as added Apr. 20, 1999, D.C. Law 12-264, § 21, 46 DCR 2118.)

CHAPTER 9. NATIONAL CHILDREN'S ISLAND.

§ 9-901. Definitions.

For the purposes of this chapter:

(1) The term "plat" means the plat filed in the Office of the Surveyor of the District of Columbia under S.O. 92-252.

(2) The term "District" means the District of Columbia.

(3) The term "Islands" means Heritage Island and all of that portion of Kingman Island located south of Benning Road and within the District of Columbia and the Anacostia River, being a portion of United States Reservation 343, Section F, as specified and legally described on the Survey.

(4) The term "National Children's Island" means a cultural, educational, and family-oriented recreation park, together with a children's playground, to be developed and operated in accordance with the Children's Island Development Plan Act of 1993, D.C. Act 10-110.

(5) The term "playground" means the children's playground that is part of National Children's Island and includes all lands on the Islands located south of East Capitol Street.

(6) The term "recreation park" means the cultural, educational, and family-oriented recreation park that is part of National Children's Island.

(7) The term "Secretary" means the Secretary of the Interior.

(8) The term "Survey" means the ALTA/ACSM Land Title Survey prepared by Dewberry & Davis and dated February 12, 1994. (July 19, 1996, 110 Stat. 1416, Pub. L. 104-163, § 2.)

References in text. — The "Children's Island Development Plan Act of 1993, D.C. Act 10-110", referred to in (4), is D.C. Law 10-57, the text of which appears at 40 DCR 7227.

§ 9-902. Property transfer.

(a) *Transfer of title.* — In order to facilitate the construction, development, and operation of National Children's Island, the Secretary shall, not later than six months after July 19, 1996 and subject to this chapter, transfer by quitclaim deed, without consideration, to the District all right, title, and interest of the United States in and to the Islands. Unbudgeted actual costs incurred by the Secretary for such transfer shall be borne by the District. The District may seek reimbursement from any third party for such costs.

(b) *Grant of easements.* — (1) The Secretary shall, not later than six months after July 19, 1996, grant, without consideration, to the District, permanent easements across the waterways and bed of the Anacostia River as described in the Survey as Leased Riverbed Areas A, B, C, and D, and across the shoreline of the Anacostia River as depicted on the plat map recorded in the Office of the Surveyor of the District as S.O. 92-252.

(2) Easements granted under paragraph (1) of this subsection shall run with the land and shall be for the purposes of:

(A) Constructing, reconstructing, maintaining, operating, and otherwise using only such bridges, roads, and other improvements as are necessary or desirable for vehicular and pedestrian egress and ingress to and from the Islands and which satisfy the District Building Code and applicable safety requirements;

(B) Installing, reinstalling, maintaining, and operating utility transmission corridors, including (but not limited to) all necessary electricity, water, sewer, gas, necessary or desirable for the construction, reconstruction, maintenance, and operation of the Islands and any and all improvements located thereon from time to time; and

(C) Constructing, reconstructing, maintaining, operating, and otherwise providing necessary informational kiosk, ticketing booth, and security for the Islands.

(3) Easements granted under paragraph (1) of this subsection shall be assignable by the District to any lessee, sublessee, or operator, or any combination thereof, of the Islands.

(c) *Development.* — The development of National Children's Island shall proceed as specified in paragraph 3 of the legend on the plat or as otherwise authorized by the District by agreement, lease, resolution, appropriate executive action, or otherwise.

(d) *Reversion.* —

(1) The transfer under subsection (a) of this section and the grant of easements under subsection (b) of this section shall be subject to the condition that the Islands only be used for the purposes of National Children's Island. Title in the property transferred under subsection (a) of this section and the easements granted under subsection (b) of this section, shall revert to the United States 60 days after the date on which the Secretary provides written notice of the reversion to the District based on the Secretary's determination, which shall be made in accordance with Chapter 5 of Title 5, United States Code (relating to administrative procedures), that one of the following has occurred:

(A) Failure to commence improvements in the recreational park within the earlier of:

(i) Three years after building permits are obtained for construction of such improvements; or

(ii) Four years after title has been transferred, as provided in subsection (a) of this section.

(B) Failure to commence operation of the recreation park within the earlier of:

(i) Five years after building permits are obtained for construction of such improvements; or

(ii) Seven years after title has been transferred, as provided in subsection (a) of this section.

(C) After completion of construction and commencement of operation, the abandonment or nonuse of the recreation park for a period of 2 years.

(D) After completion of construction and commencement of operation, conversion of the Islands to a use other than that specified in this chapter or conversion to a parking use not in accordance with § 9-903(b).

(2) The periods referred to in paragraph (1) of this subsection shall be extended during the pendency of any lawsuit which seeks to enjoin the development or operation of National Children's Island or the administrative process leading to such development or operation.

(3) Following any reconveyance or reversion to the National Park Service, any and all claims and judgments arising during the period the District holds title to the Islands, the playground, and premises shall remain the responsibility of the District, and such reconveyance or reversion shall extinguish any and all leases, rights or privileges to the Islands and the playground granted by the District.

(4) The District shall require any nongovernmental entity authorized to construct, develop, and operate National Children's Island to establish an escrow fund, post a surety bond, provide a letter of credit or otherwise provide such security for the benefit of the National Park Service, substantially equivalent to that specified in paragraph 11 of the legend on the plat, to serve as the sole source of funding for restoration of the recreation park to a condition suitable for National Park Service purposes (namely, the removal of all buildings and grading, seeding and landscaping of the recreation park) upon reversion of the property. If, on the date which is two years from the date of reversion of the property, the National Park Service has not commenced restoration or is not diligently proceeding with such restoration, any amount in

the escrow fund shall be distributed to such nongovernmental entity. (July 19, 1996, 110 Stat. 1416, Pub. L. 104-163, § 3.)

§ 9-903. Provisions Relating to Lands Transferred and Easements Granted.

(a) *Playground.* — Operation of the recreation park may only commence simultaneously with or subsequent to improvement and opening of a children's playground at National Children's Island that is available to the public free of charge. The playground shall only include those improvements traditionally or ordinarily included in a publicly maintained children's playground. Operation of the recreation park is at all times dependent on the continued maintenance of the children's playground.

(b) *Public parking.* — Public parking on the Islands is prohibited, except for handicapped parking, emergency and government vehicles, and parking related to constructing, and servicing National Children's Island.

(c) *Required approvals.* — Before construction commences, the final design plans for the recreation park and playground, and all related structures, including bridges and roads, are subject to the review and approval of the National Capital Planning Commission and of the District of Columbia in accordance with the Children's Island Development Plan Act of 1993 (D.C. Act 10-110). The District of Columbia shall carry out its review of this project in full compliance with all applicable provisions of the National Environmental Policy Act of 1969. (July 19, 1996, 110 Stat. 1418, Pub. L. 104-163, § 4.)

References in text. — The National Environmental Policy Act of 1969, referred to in subsection (c) of this section, is the Act of January 1, 1970, 83 Stat. 852, Pub. L. 91-190 which is codified at 42 U.S.C. § 4321, 4331 et seq, and 4341 et seq.

The "Children's Island Development Plan Act of 1993, D.C. Act 10-110", referred to in (c), is D.C. Law 10-57, the text of which appears at 40 DCR 7227.

§ 9-904. Effect of Property Transfer.

(a) *Effect of property transfer.* — Upon the transfer of the Islands to the District pursuant to this chapter:

(1) The Transfer of Jurisdiction concerning the Islands from the National Park Service to the District dated February 1993, as set out on the plat map recorded in the Office of the Surveyor of the District as S.O. 92-252 and as approved by the Council of the District by Resolution 10-91, shall become null and void and of no further force and effect, except for the references in this chapter to paragraphs 3 and 11 of the legend on the plat.

(2) The Islands shall no longer be considered to be part of Anacostia Park and shall not be considered to be within the park system of the District; therefore, the provisions of § 8-104, shall not apply to the Islands, and the District shall have exclusive charge and control over the Islands and easements transferred.

(3) The Islands shall cease to be a reservation, park, or public grounds of the United States for the purposes of § 8-128.

(b) *Use of certain lands for parking and other purposes.* — Notwithstanding any other provision of law, the District is hereby authorized to grant via appropriate instrument to a nongovernmental individual or entity any and all

of its rights to use the lands currently being leased by the United States to the District pursuant to subchapter II of Chapter 3 of Title 2, September 7, 1957, 71 Stat. 619), for parking facilities (and necessary informational kiosk, ticketing booth, and security) as the Mayor of the District in his discretion may determine necessary or appropriate in connection with or in support of National Children's Island. (July 19, 1996, 110 Stat. 1419, Pub. L. 104-163, § 5.)

References in text. — Resolution 10-91, referred to in (a)(1), was published August 6, 1993, at 40 DCR 5514.

CHAPTER 10. FEDERAL ACTIVITIES AFFECTING DISTRICT PROPERTY.

Sec.
9-1001. [Repealed].

§ 9-1001. Prior notice for federal activities affecting real property.

Repealed.

(Aug. 5, 1997, 111 Stat. 784, Pub. L. 105-33, § 11715; Nov. 19, 1997, 111 Stat. 2186, Pub. L. 105-100, § 157(f).)

CHAPTER 11. OFFICE OF PROPERTY MANAGEMENT.

Sec.
9-1101. Establishment of the Office of Property Management.
9-1102. Purpose.
9-1103. Functions.
9-1104. Transfers.
9-1105. Organization.

§ 9-1101. Establishment of the Office of Property Management.

(a) Pursuant to § 1-227(b), there is hereby established, in the Executive Branch of the government of the District of Columbia, an Office of Property Management ("Office") under the supervision of a Chief Property Management Officer, who shall carry out the functions and authorities assigned to the Office. The Office of Property Management is established as of July 13, 1998.

(b) The Chief Property Management Officer shall have full authority over the Office and all functions and personnel assigned thereto, including the power to redelegate to other employees and officials of the Office such powers and authority as in the judgment of the Chief Property Management Officer is warranted in the interests of efficiency and sound administration. (Mar. 26, 1999, D.C. Law 12-175, § 1802, 45 DCR 7193.)

Emergency act amendments. — For temporary addition of section, see § 1402 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1402 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

For temporary abolition, as of October 1, 1998, of the Department of Administrative Services, established under Reorganization Plan No. 5 of 1983, effective March 1, 1983, see § 1408 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1408 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Legislative history of Law 12-175. — Law 12-175, the "Fiscal Year 1999 Budget Support Act of 1998," was introduced in Council and assigned Bill No. 12-618, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on May 5, 1998, and June 2, 1998, respectively. Signed by the Mayor on June 23, 1998, it was assigned Act No. 12-399 and transmitted to both Houses of Congress for its review. D.C. Law 12-175 became effective on March 26, 1999.

Office of Property Management Establishment Act of 1998. — Section 1801 of D.C. Law 12-175 provided that Subtitle A of Title XVIII of the act may be cited as the "Office of Property Management Establishment Act of 1998."

Department of Administrative Services abolished. — Section 1808 of D.C. Law 12-175 abolished the Department of Administrative Services, established under Reorganization Plan No. 5 of 1983, pursuant to § 404(b) of the District of Columbia Home Rule Act, (D.C. Code § 1-227(b)). The Department of Administrative Services is abolished as of October 1, 1998.

§ 9-1102. Purpose.

The purpose of the Office is to manage the real property assets of the District of Columbia and, in particular, to maximize the value of those assets; to minimize the use and the costs to the District government of privately leased space, buildings, and other facilities; to supervise the efficient and cost-effective allocation and assignment of space within District-owned, controlled and leased facilities; and to develop and maintain effective systems to manage and account for the District's personal property assets. Nothing in this subtitle shall affect the disposition of certain school property as set forth in § 47-392.25. (Mar. 26, 1999, D.C. Law 12-175, § 1803, 45 DCR 7193.)

Emergency act amendments. — For temporary addition of section, see § 1403 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1403 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Legislative history of Law 12-175. — See note to § 9-1101.

§ 9-1103. Functions.

The functions of the Office shall be to:

(1) Acquire real property, by purchase or lease, for use by the District government;

(2) Manage space in buildings and adjacent areas operated and leased by the District government, assist District agencies in implementing space plans, and administer the employee parking program;

(3) Provide building services for facilities owned and occupied by the District government, including engineering services, custodial services, security services, energy conservation, utilities management, maintenance, inspection and planning, and repairs and non-structural improvements;

(4) Manage the capital improvement and construction program for District government facilities;

(5) Dispose of District real and personal property through sale, lease, or other authorized method, and to exercise other acquisition and property disposition authority delegated by the Mayor; and

(6) Manage data and information needs pertaining to real property, including maintaining inventory records for tracking and controlling District-

owned, controlled, and leased space. (Mar. 26, 1999, D.C. Law 12-175, § 1804, 45 DCR 7193.)

Emergency act amendments. — For temporary addition of section, see § 1404 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1404 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Legislative history of Law 12-175. — See note to § 9-1101.

§ 9-1104. Transfers.

(a) All positions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds available or to be made available to the Department of Administrative Services for the real property management functions set out in Reorganization Plan No. 5 of 1983, effective March 1, 1984, are hereby transferred to the Office.

(b) All the functions assigned, and authorities delegated to the Department of Administrative Services in Sections III(A), III(C), III(E), and III(F) of Reorganization Plan No. 5 of 1983, effective March 1, 1984, are hereby transferred to the Office.

(c) All the functions assigned and authorities delegated to the Department of Public Works in section III(J) of Reorganization Plan No. 4 of 1983, effective March 1, 1984, are hereby transferred to the Office. (Mar. 26, 1999, D.C. Law 12-175, § 1805, 45 DCR 7193; Apr. 20, 1999, D.C. Law 12-264, § 63(a), 45 DCR 7193.)

Effect of amendments. — D.C. Law 12-264, in (b), substituted "III(F) of Reorganization Plan No. 5 of 1983" for "III(F), and III(G) of Reorganization Plan No. 5 of 1983."

Emergency act amendments. — For temporary addition of section, see § 1405 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1405 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Legislative history of Law 12-175. — See note to § 9-1101.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

§ 9-1105. Organization.

(a) There are hereby established four primary organizational functions in the Office as follows:

(1) The Office of the Chief Property Management Officer, which will include the staff and organizational units needed to carry out the overall plans and directions for the Office of Property Management;

(2) The Property Management Division, which will coordinate and manage real property throughout the District government, including the acquisition and disposition of such property; oversee the capital improvement and construction program for District government facilities; and administer building operations;

(3) The Protective Services Division, which will coordinate and manage the security requirements for District government facilities; and

(4) The Support Services Division, which will coordinate and manage the procurement, financial, technology, and administrative functions for the office, and manage the personal property inventory for the District.

(b) The Chief Property Management Officer, in the performance of his or her duties and functions, is authorized to restructure the organizational components of the Office as he or she deems necessary to improve the quality of services. (Mar. 26, 1999, D.C. Law 12-175, § 1806, 45 DCR 7193.)

Emergency act amendments. — For temporary addition of section, see § 1406 of the Fiscal Year 1999 Budget Support Emergency Act of 1998 (D.C. Act 12-401, July 13, 1998, 45 DCR 4794), and § 1406 of the Fiscal Year 1999 Budget Support Congressional Review Emergency Act of 1998 (D.C. Act 12-564, January 12, 1999, 46 DCR 669).

Legislative history of Law 12-175. — See note to § 9-1101.

TITLE 10. WEIGHTS, MEASURES, AND MARKETS.

CHAPTER 1. WEIGHTS, MEASURES, AND MARKETS.

§ 10-130. Weighmasters; public scales; fees.

Repealed.

(Mar. 3, 1921, 41 Stat. 1224, ch. 118, § 26; 1973 Ed., § 10-128; Apr. 20, 1999, D.C. Law 12-261, § 2003(o), 46 DCR 3142.)

Legislative history of Law 12-261. — Law 12-261, the "Second Omnibus Regulatory Reform Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-615, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 1, 1998, and December 15, 1998, respectively. Signed by the Mayor on December 31, 1998, it was assigned Act No. 12-615 and transmitted to both Houses of Congress for its review. D.C. Law 12-261 became effective on April 20, 1999.

§ 10-138. Markets; disposition of receipts; charges.

On and after July 1, 1906, all receipts of the Wholesale Producers' Market, including the receipts for the occupation of the south side of B Street northwest, and the Farmers' Street Markets adjacent to the Western and Georgetown Markets, respectively, shall be paid to the Director of the Department of Finance and Revenue, to the credit of the revenues of the District, weekly. There is hereby authorized for the use of space at the above-mentioned street markets a space charge of $1 per day for each space occupied for rent. The market masters of the several markets herein mentioned shall make collections daily and make a return thereof, with a sworn statement, weekly to the sealer of weights and measures, who shall deposit the same with the Mayor to the credit of the revenues of the District of Columbia.

* * * * *

(Apr. 16, 1999, D.C. Law 12-228, § 15, 46 DCR 1066.)

Cross references.

As to Eastern Market real property asset management and outdoor vending, see § 10-301 et seq.

Effect of amendments. — D.C. Law 12-228 deleted "Eastern" preceding "Western and Georgetown Markets" in the first sentence.

Temporary continuation of non-food open air retailing at Eastern Market — Sections 2 and 3 of D.C. Law 12-133, the Eastern Market Open Air Retailing Temporary Act of 1998, provide, on a temporary basis, for the interim continuation of non-food open air retailing in the exterior space at Eastern Market that is not otherwise leased.

Section 5(b) of D.C. Law 12-133 provides that the act shall expire after 225 days of its having taken effect.

Temporary continuation of non-food open air retailing at Eastern Market — Sections 2 and 3 of D.C. Law 12-150, the Eastern Market Open Air Retailing Temporary Act of 1998, provide, on a temporary basis, for the interim continuation of non-food open air

retailing in the exterior space at Eastern Market and to clarify the extent to which exterior space is otherwise leased.

Section 4 of D.C. Law 12-150 provides for the repeal of the Eastern Market Open Air Retailing Temporary Act of 1998.

Section 6(b) of D.C. Law 12-150 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary permission, on an emergency basis, for the interim continuation of non-food open air retailing, see §§ 2 and 3 of the Eastern Market Open Air Retailing Emergency Act of 1998 (D.C. Act. 12-320, April 6, 1998, 45 DCR 2296), and see §§ 2 and 3 of the Eastern Market Open Air Retailing Second Emergency Act of 1998 (D.C. Act 12-352, May 12, 1998, 45 DCR 3104).

For temporary repeal of the Eastern Market Open Air Retailing Emergency Act of 1998 (D.C. Act 12-320), see § 4(a) of the Eastern Market Open Air Retailing Second Emergency Act of 1998 (D.C. Act 12-352, May 12, 1998, 45 DCR 3104).

For temporary repeal of the Eastern Market Open Air Retailing Temporary Act of 1998 (Bill 12-513), see § 4(b) of the Eastern Market Open Air Retailing Second Emergency Act of 1998 (D.C. Act 12-352, May 12, 1998, 45 DCR 3104).

For temporary provision to permit, on an emergency basis, the interim continuation of non-food open air retailing in the exterior space at Eastern Market that is not otherwise leased, see §§ 2 and 3 of the Eastern Market Open Air Retailing Emergency Act of 1998 (D.C. Act 12-320, April 6, 1998, 45 DCR 2296). D.C. Act 12-320 was subsequently repealed by § 4(a) of the Eastern Market Open Air Retailing Second Emergency Act of 1998 (D.C. Act 12-352, May 12, 1998, 45 DCR 3104), and § 4(a) of the Eastern Market Open Air Retailing Congressional Review Emergency Act of 1998 (D.C. Act 12-435, August 12, 1998, 45 DCR 5951)

For temporary provision to permit, on an emergency basis, the interim continuation of non-food open air retailing in the exterior space at Eastern Market and to clarify the extent to which exterior space is otherwise leased, see §§ 2 and 3 of the Eastern Market Open Air Retailing Second Emergency Act of 1998 (D.C. Act 12-352, May 12, 1998, 45 DCR 3104), and §§ 2 and 3 of the Eastern Market Open Air Retailing Congressional Review Emergency Act of 1998 (D.C. Act 12-435, August 12, 1998, 45 DCR 5951).

Legislative history of Law 12-133. — Law 12-133, the "Eastern Market Open Air Retailing Temporary Act of 1998," was introduced in Council and assigned Bill No. 12-573. The Bill was adopted on first and second readings on March 3, 1998, and April 7, 1998, respectively. Signed by the Mayor on April 20, 1998, it was assigned Act No. 12-333 and transmitted to both Houses of Congress for its review. D.C. Law 12-133 became effective on July 24, 1998.

Legislative history of Law 12-150. — Law 12-150, the "Eastern Market Open Air Retailing Second Temporary Act of 1998," was introduced in Council and assigned Bill No. 12-620. The Bill was adopted on first and second readings on April 21, 1998, and May 5, 1998, respectively. Signed by the Mayor on May 20, 1998, it was assigned Act No. 12-362 and transmitted to both Houses of Congress for its review. D.C. Law 12-150 became effective on September 18, 1998.

Legislative history of Law 12-228. — Law 12-228, the "Eastern Market Real Property Asset Management and Outdoor Vending Act of 1998," was introduced in Council and assigned Bill No. 12-477, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 2, 1998, and June 16, 1998, respectively. Signed by the Mayor on July 8, 1998, it was assigned Act No. 12-416 and transmitted to both Houses of Congress for its review. D.C. Law 12-228 became effective on April 16, 1999.

CHAPTER 2. RETAIL SERVICE STATIONS.

Subchapter IV. Moratorium on Conversions to Limited Service Retail Service Stations.

Subchapter III. Marketing Agreements.

§ 10-225. Sale, assignment, or other transfer of a marketing agreement.

Cited in In re M.M.D., App. D.C., 662 A.2d 837 (1995).

Subchapter IV. Moratorium on Conversions to Limited Service Retail Service Stations.

§ 10-231. Prohibition on conversions; Gas Station Advisory Board.

* * * * *

(b) No retail service station which is operated as a full service retail service station on or after April 19, 1977, may be structurally altered, modified, or otherwise converted, irrespective of the type or magnitude of the alteration, modification, or conversion, including, but not limited to, any alteration, modification, or conversion which has the effect of merely obstructing access to an existing garage, service bay, work area, or similar enclosed area by any motor vehicle which was previously accommodated, into a nonfull service facility until October 1, 1999.

(c) No person who is an operator of any full service retail service station on or after April 19, 1977, including any person who is a subsequent operator of any such retail service station, or who, in any manner, controls the operation of any such retail service station, shall substantially reduce the number, types, quantity, or quality of the repair, maintenance, and other services, including the retail sale of motor fuels, petroleum products, and automotive products, previously offered until October 1, 1999. Such operators shall maintain the retail service station's existing garages, service bays, work areas, and similar areas in a fully operational condition and reasonably equipped to perform repair, maintenance, and service work on motor vehicles, including the provision of a qualified individual or individuals who is or are capable of performing repair, maintenance, and service work on motor vehicles during a reasonable number of hours per day and of days per week. This subsection shall not be construed as prohibiting any person who operates or controls a full service retail service station from discontinuing the retail sale of motor fuels at such retail service station, provided that less than 20% of such retail service station's gross revenue derived from the retail sale of motor fuels, petroleum products, and automotive products and from the repair, maintenance, and servicing of motor vehicles is derived from the retail sale of motor fuels, and provided further that such discontinuance of the retail sale of motor fuels shall not authorize any other substantial reduction in repair, maintenance, or other services previously offered. This subsection shall not be construed as prohibiting a full service retail service station from selling motor fuels on a self-service basis, provided that such retail service station continues to sell motor fuels on a nonself-service basis.

(d)(1) A petition for exemption shall be filed with the Mayor by both a distributor and a retail dealer ("petitioners"). The Mayor may grant an exemption to the prohibitions contained in subsections (b) and (c) of this section if the petitioners agree in writing that the distributor will perform the following:

(A) Structurally alter, modify, or otherwise convert a retail service station, irrespective of the type or magnitude of the alteration, modification, or conversion, including, but not limited to, any alteration, modification, or

conversion that has the effect of merely obstructing access to an existing garage, service bay, work area, or similar enclosed area by any motor vehicle that was previously accommodated, into a nonfull service facility; or

(B) Substantially reduce the number, type, quantity, or quality of repairs, maintenance, and other services including the retail sale of motor fuels, petroleum products, and automotive products; and

(C) Certify that a station is experiencing financial hardship; or

(D) Certify that there is another retail service station within one mile of the station that provides equivalent service facilities; and

(E) Certify that the distributor will improve the station in the following ways:

(i) Improve or increase the lighting of the facility;

(ii) Improve customer accessibility to the gasoline dispensers; and

(iii) Improve customer conveniences including separate mens and womens restroom facilities, a working air hose for automobile and bicycle tires, and water for windshield cleaning equipment.

(2) The Mayor shall issue a determination on the petition within 45 days after the date the petition is submitted and deemed complete. If the Mayor does not issue a recommendation within the 45 days the petition shall be deemed approved.

(e)(1) Within 30 days of August 8, 1996, the Mayor shall appoint a Gas Station Advisory Board to make recommendations on petitions for exemptions. The Board shall consist of 5 members: one representing the retail service station dealers, one representing the oil companies, 2 representing the consumer interest, and one representing the Mayor.

(2) The Board shall establish and publish, for 30 days comment, the rules and procedures which shall govern its conduct.

(3) The Board may establish and publish, for 30 days comment, additional criteria which shall be used in reviewing the petitions for exemptions.

(4) The Board shall cease to exist on October 1, 1999.

(f) The Mayor shall study the motor vehicle repair, maintenance, and other services being offered by existing full service retail stations and non-full service retail service stations to residents, commercial establishments, commuters, and other affected persons in the District of Columbia, both in terms of adequacy and in terms of convenience. This study shall include an analysis of the impact of converting existing full service retail service stations to non-full service retail service stations in various areas of the District of Columbia. The Mayor shall study the adequacy of existing retail service stations to serve the needs and convenience of residents, commercial establishments, commuters, and other affected persons with respect to the retail sale of motor fuels, petroleum products, and automotive products in various areas of the District of Columbia. The study shall include an examination of the petroleum products and automotive products being offered by commercial establishments other than retail service stations. The Mayor shall, if necessary, present to the Council a preliminary report within 30 days after September 21, 1988. A final report detailing the findings of the study, including the Mayor's recommendations or proposals with respect to any necessary or desirable legislation or other actions, shall be submitted to the Council no later than June 1, 1989.

(g) Any person, including the principal officers or agents of a corporation or association, who falsely certifies a petition for exemption, or willfully or knowingly fails to provide information required by this act, or intentionally provides misleading information required by this act, upon conviction, shall be subject to a fine of not less than $500, but not more than $2,000, for each offense.

(h) The Mayor shall, pursuant to subchapter I of Chapter 15 of Title 1 issue rules to implement the provisions of this subchapter which shall include a requirement that each petition for exemption include an estimated date of completion for each phrase of a full service retail station conversion. (1973 Ed., § 10-231; Apr. 19, 1977, D.C. Law 1-123, § 5-301, 24 DCR 2371; Dec. 29, 1979, D.C. Law 3-44, § 2(c), 26 DCR 2093; Oct. 24, 1981, D.C. Law 4-45, § 2, 28 DCR 4269; Mar. 14, 1985, D.C. Law 5-145, § 2, 31 DCR 5975; Dec. 16, 1987, D.C. Law 7-59, § 2, 34 DCR 7085; Sept. 21, 1988, D.C. Law 7-148, § 2, 35 DCR 5427; Aug. 17, 1991, D.C. Law 9-44, § 2, 38 DCR 4986; Apr. 18, 1996, D.C. Law 11-110, § 22, 43 DCR 530; Apr. 9, 1997, D.C. Law 11-196, § 2, 43 DCR 4564.)

Effect of amendments. — D.C. Law 11-110 validated previously made punctuation changes in (c) and (f); and validated a previously made stylistic change in (d)(1)(C)(ii).

D.C. Law 11-196 substituted "October 1, 1999" for "October 1, 1995" in (b) and (c); rewrote (d) and (e); and added (g) and (h).

Temporary amendment of section. — Section 2 of D.C. Law 11-68 amended subsection (b) by striking the phrase "October 1, 1995" and inserting the phrase "October 1, 1999" in its place; amended subsection (c) by striking the phrase "October 1, 1995" and inserting the phrase "October 1, 1999" in its place; and amended paragraph (e)(4) by striking the phrase "October 1, 1995" and inserting the phrase "October 1, 1999" in its place.

Section 3(b) of D.C. Law 11-68 provides that the act shall expire after 225 days of its having taken effect or upon the effective date of the Extension of the Moratorium on Retail Service Station Conversions Amendment Act of 1995, whichever comes first.

Section 202 of D.C Law 11-206 rewrote (e).

Section 401(b) of D.C Law 11-206 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2 of the Extension of the Moratorium on Retail Service Station Conversions Emergency Amendment Act of 1995 (D.C. Act 11-101, July 21, 1995, 42 DCR 4007).

For temporary amendment of section, see § 2 of the Extension of the Moratorium on Retail Service Station Conversions Emergency Act of 1996 (D.C. Act 11-280, June 28, 1996, 43 DCR 3667), § 2 of the Extension of the Moratorium on Retail Service Station Conversions Congressional Review Emergency Act of 1996 (D.C. Act 11-419, October 28, 1996, 43 DCR 6088), § 2 of the Extension of the Moratorium on Retail Service Station Conversions Second Congressional Review Emergency Act of 1996 (D.C. Act 11-479, December 30, 1996, 44 DCR 209), and § 2 of the Extension of the Moratorium on Retail Service Station Conversions Congressional Review Emergency Act of 1997 (D.C. Act 12-19, March 3, 1997, 44 DCR 1762).

For temporary requirement for the Mayor to issue rules to implement the provisions of this act, see § 3 of the Extension of the Moratorium on Retail Service Station Conversions Emergency Act of 1996 (D.C. Act 11-280, June 28, 1996, 43 DCR 3667), § 3(a) of the Extension of the Moratorium on Retail Service Station Conversions Congressional Review Emergency Act of 1996 (D.C. Act 11-419, October 28, 1996, 43 DCR 6088), § 3 of the Extension of the Moratorium on Retail Service Station Conversions Second Congressional Review Emergency Act of 1996 (D.C. Act 11-479, December 30, 1996, 44 DCR 209), and see § 3 of the Extension of the Moratorium on Retail Service Station Conversions Congressional Review Emergency Act of 1997 (D.C. Act 12-19, March 3, 1997, 44 DCR 1762).

For temporary designation of title as the Gas Station Advisory Board Re-establishment Emergency Act of 1996, see § 201 of the Paternity Acknowledgment and Gas Station Advisory Board Re-establishment Emergency Act of 1996 (D.C. Act 11-356, August 8, 1996, 43 DCR 4561).

For temporary amendment of section, see § 202 of the Paternity Acknowledgment and Gas Station Advisory Board Re-establishment Emergency Act of 1996 (D.C. Act 11-356, August 8, 1996, 43 DCR 4561).

Legislative history of Law 11-68. — Law 11-68, the "Extension of the Moratorium on Retail Service Station Conversions Temporary Amendment Act of 1995," was introduced in Council and assigned Bill No. 11-378. The Bill was adopted on first and second readings on July 11, 1995, and July 29, 1995, respectively.

Signed by the Mayor on August 9, 1995, it was assigned Act No. 11-131 and transmitted to both Houses of Congress for its review. D.C. Law 11-68 became effective on October 26, 1995.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Legislative history of Law 11-196. — Law 11-196, the "Extension of Moratorium on Retail Service Station Conversions and the Gas Station Advisory Board Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-109, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on June 4, 1996, and July 3, 1996, respectively. Signed by the Mayor on July 26, 1996, it was assigned Act No. 11-358 and transmitted to both Houses of Congress for its review. D.C. Law 11-196 became effective on April 9, 1997.

Legislative history of Law 11-206. — Law 11-206, the "Paternity Acknowledgment and Gas Station Advisory Board Reestablishment Temporary Act of 1996," was introduced in Council and assigned Bill No. 11-748. The Bill was adopted on first and second readings on July 3, 1996, and July 17, 1996, respectively. Signed by the Mayor on August 5, 1996, it was assigned Act No. 11-378 and transmitted to both Houses of Congress for its review. D.C. Law 11-206 became effective on April 9, 1997.

Exemption from Moratorium on Conversions of Full Service Retail Service Stations: Exxon Stations located at 3535 Connecticut Ave., N.W., and Connecticut Ave., N.W. — See Mayor's Order 98-91, June 9, 1998 (45 DCR 4562).

Exemption from Moratorium on Conversions of Full Service Retail Service Stations: Mobile Station located at 2200 P St., N.W. — See Mayor's Order 98-119, July 24, 1998 (45 DCR 6381).

CHAPTER 3. EASTERN MARKET MANAGEMENT AND REGULATION.

§ 10-301. Definitions.

For the purpose of this chapter, the term:

(1) "Agricultural products" means vegetables, fruits, grains, mushrooms, honey, plants, plant cuttings, flowers, herbs, nuts, seeds, bulbs, and rootstock and includes baked or processed foods that are:

(A) Processed in some way by the market vendor; and

(B) Approved by the regulatory authorities.

(2) "Antiques" means items of personal property manufactured or made more than 100 years ago.

(3) "Artist" means an individual who created the works of art offered for sale and includes two or more individuals who work together in creating individual works of art offered for sale.

(4) "Center hall" means the 3,160 square feet of the Eastern Market building on the first and second floors that is between the South Hall and North Hall and which, on April 16, 1999, contained a pottery studio and bathrooms.

(5) "Chief Property Management Officer" ("CPMO") means the Chief Property Management Officer of the District of Columbia Office of Property Management.

(6) "Community Arts Center" means a space operated for the promotion of the arts including performances, exhibitions, sales, demonstrations and instruction.

(7) "Community group" means any District-based not-for-profit association or organization whose mission in some way serves the interests of the District's residents.

(8) "Compatible or complementary uses" means uses similar to the other permitted uses of Eastern Market Square or uses that would enhance and not detract from those uses.

(9) "Crafter" means an individual who created the hand-crafted goods offered for sale and includes two or more individuals who work together in creating individual hand-crafted goods offered for sale.

(10) "Eastern Market" means the building at Lot 800, Square 872 in the District of Columbia.

(11) "Eastern Market Community Advisory Committee" ("EMCAC"), means the advisory committee created in § 10-311.

(12) "Eastern Market special use area" means public land near Eastern Market Square, including but not limited to the playground and parking lot of Hine Junior High School and the Capitol Hill Natatorium Plaza.

(13) "Eastern Market Square" means the area between the south curb of North Carolina Avenue, S.E., and the north curb of C Street, S.E., and between the west curb of 7th Street, S.E., and the building line with the Capitol Hill Natatorium.

(14) "Eastern Market Tenants Council" means an Eastern Market tenants' group comprised of one representative of each major activity, including, but not limited to, the farmers, South Hall stall holders, Center Hall tenants, North Hall tenants, arts and crafts market vendors, and flea market vendors.

(15) "Farmer" means a market vendor who sells agricultural products, of which at least 70%, during the April-November harvest season was: (A) grown on land owned or leased by the market vendor; (B) grown on land neighboring the land owned or leased by the market vendor; (C) obtained directly from others who have grown the product on land which is owned or leased by the producer; or (D) in the non-harvest season of December-March, a market vendor who sells agricultural products in the harvest season, of which at least 30% was either (A), (B), or (C) of this paragraph.

(16) "Farmers' line" means that portion of the Eastern Market Square (under the existing shed) and extending north to North Carolina Avenue, S.E., and south of the shed along the sidewalk of 7th Street, S.E., to C Street, S.E., as well as the portion of the Eastern Market square between Eastern Market and the curb of C Street, S.E.

(17) "Food merchant" means a market vendor who sells agricultural products or prepared food, both home-grown and food obtained from wholesalers, but primarily from food wholesalers, to retail customers.

(18) "Food wholesaler" means vendors who sell agricultural products grown by themselves and others to a food merchant for resale to retail customers.

(19) "Hand-crafted goods" means items produced or created from raw or basic materials that are changed into a significantly different shape, design, form or function using a special skill, trade or manual art.

(20) "Importers of handcrafted and indigenous goods" means market vendors who sell items that are ethno-specific and are designed, produced and representative of the country of origin and purchased by the applicant in the country of origin or imported by the market vendor.

(21) "Market manager" means the not-for-profit association or corporation contracted to provide coordinated management for the Eastern Market Square and the individual or individuals designated to provide day-to-day management of the Eastern Market Square.

(22) "Market vendor" means an individual, association or corporation (including, but not limited to, any partnership, society, club, joint-stock company, estate, receiver, trustee, assignee, or referee, and any combination of individuals acting as a unit) with a currently enforceable contract or agreement with the market manager and engaged in selling any good in or about the Eastern Market Square and includes any artist, any crafter, any farmer and any merchant.

(23) "North Hall" means the 4,500 square feet of space on the ground floor of the North end of Eastern Market.

(24) "North Plaza" means that portion of Eastern Market Square bounded by the private right of way on the west, North Carolina Avenue, S.E., on the north, the Farmers' Line on the east, and the north face of the Eastern Market building on the south.

(25) "Office of Property Management" ("OPM") means the District of Columbia Office of Property Management.

(26) "Sidewalk market" means the areas, covered and uncovered, between the building and the street curbs on the south, east and north sides of the Eastern Market building on the Eastern Market Square.

(27) "Sidewalk market stall" means a sidewalk space of at least 32 square feet (normally eight feet by four feet) within which a market vendor is permitted to display and sell goods.

(28) "South Hall" means the 9,500 square feet of the ground floor and basement of the Eastern Market building at the southern end of the building closest to C Street, S.E.

(29) "Tenant" means an individual, association or corporation (including, but not limited to, any partnership, society, club, joint-stock company, estate, receiver, trustee, assignee, or referee, and any combination of individuals acting as a unit) but not limited to organizations and community groups having a written contract with the market manager to occupy space inside the Eastern Market building.

(30) "Vintage goods or collectibles" means any items of personal property previously purchased at retail.

(31) "Works of art" means drawings, paintings, sculptures, photographs, ornamental textiles, ornamental glass, ornamental pottery, and any other items created primarily for aesthetic appreciation. (Apr. 16, 1999, D.C. Law 12-228, § 2, 46 DCR 1066; Apr. 20, 1999, D.C. Law 12-264, § 22(a), 46 DCR 1066.)

Effect of amendments. — D.C. Law 12-264, in (22), inserted "with a currently enforceable contract or agreement with the market manager and."

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Legislative history of Law 12-228. — Law 12-228, the "Eastern Market Real Property Asset Management and Outdoor Vending Act of 1998," was introduced in Council and assigned Bill No. 12-477, which was referred to the Committee on Government Operations. The Bill was adopted on first and second readings on June 2, 1998, and June 16, 1998, respectively. Signed by the Mayor on July 8, 1998, it was assigned Act No. 12-416 and transmitted to both Houses of Congress for its review. D.C. Law 12-228 became effective on April 16, 1999.

§ 10-302. Coordinated management.

(a) The OPM shall supervise and provide coordinated management over all operations in the Eastern Market Square. On the effective date of this act, the District of Columbia shall notify any extant lessees and sub-assignees with an existing lease, contract, agreement or legally binding understanding with respect to any occupant or occupants of the Eastern Market building of the status of their lease or agreement, including the date of termination or expiration of their lease or sub-assignment or any other change to an agreement or legally binding understanding with the District of Columbia that is required by this chapter. The District of Columbia shall remain responsible for capital expenditures for Eastern Market and the Eastern Market Square.

(b) The CPMO may promulgate rules to implement this chapter. (Apr. 16, 1999, D.C. Law 12-228, § 3, 46 DCR 1066.)

Legislative history of Law 12-228. — See note to § 10-301.

§ 10-303. Enterprise fund.

(a) There is established the Eastern Market Enterprise Fund ("Fund"), an interest-bearing account, pursuant to § 47-373(4)(2)(D). The Fund shall be operated by the CPMO in accordance with general accepted accounting principles.

(b) The CPMO shall deposit into the Fund all revenues, proceeds, and moneys from whatever source derived which are collected or received by the CPMO on behalf of Eastern Market. These revenues, proceeds, and moneys shall be credited to the Fund and shall not, at anytime, be transferred to, lapse into, or be commingled with the General Fund of the District of Columbia, the Cash Management Pool, or any other funds or accounts of the District of Columbia, except for funds transferred to the District of Columbia Treasurer to pay all expenses related to the management and maintenance of the Eastern Market Square.

(c) All Eastern Market accounts shall be independently audited annually by the District of Columbia Auditor, and the audit shall be submitted to the Mayor and the Council. (Apr. 16, 1999, D.C. Law 12-228, § 4, 46 DCR 1066; Apr. 20, 1999, D.C. Law 12-264, § 22(b), 46 DCR 1066.)

Effect of amendments. — D.C. Law 12-264, inserted "on behalf of Eastern Market" in the first sentence of (b).

Legislative history of Law 12-228. — See note to § 10-301.

Legislative history of Law 12-264. — See note to § 10-301.

§ 10-304. Market operation.

Eastern Market shall be operated primarily as an indoor urban fresh food market and an outdoor Farmers' Line, with a community arts center and public meeting space in the North Hall, with an arts and crafts market and a flea market on the North Plaza, and with compatible uses in the Center Hall. (Apr. 16, 1999, D.C. Law 12-228, § 5, 46 DCR 1066.)

Legislative history of Law 12-228. — See note to § 10-301.

§ 10-305. Market manager.

(a) The CPMO shall consult with the EMCAC in preparing each request for proposals ("RFP") which shall be issued by the District government for the selection of a market manager. The CPMO shall submit to the EMCAC each response to the market manager RFP for its review and recommendations. The CPMO shall consider the EMCAC's recommendations in selecting a market manager.

(b) The CPMO shall contract, in accordance with the provisions of this chapter and Chapter 11A of Title 1, with one not-for-profit association or corporation having experience operating an historic urban fresh food or farmers' market, or experience relevant to the management of the activities described in subsection (c) of this section, and having access to sufficient working capital to manage and operate the Eastern Market Square on a self-sustaining basis as the market manager.

(1) The CPMO shall lease the Eastern Market Square, including the Eastern Market building and its public land and public space to the market manager who then may sublease by written contracts all or part of the building and public land and public space to one or more persons for use in accordance with this chapter. Existing leases, contracts, agreements, and legally binding understandings shall remain valid until the date of expiration or termination in accordance with the terms of the document, unless both parties agree otherwise. Pursuant to § 10-307, the sub-lease may be renewed under substantially similar terms, subject to the requirements set out in § 10-307.

(2) The market manager shall act as the lessor's agent on any existing lease, contract, agreement, or legally binding understanding with respect to any occupant or occupants of the Eastern Market building.

(c) Any entity having an ownership, management or fiduciary interest in any activity subject to the management of the market manager shall be ineligible to be selected as the market manager. Any entity selected as the market manager may not engage in retail or wholesale sales on the Eastern Market Square.

(d) Subject to review and advice by the EMCAC, the market manager shall manage and operate the Eastern Market Square to accomplish the following:

(1) Retain its historic character as a food market and farmers' sidewalk market while continuing the sale of arts, crafts, antiques, and other items that complement a farmers' sidewalk market;

(2) Maintain the Eastern Market Square and building;

(3) Protect the environment including the trees and tree boxes; and

(4) Ensure public health and safety.

(e) The market manager shall attend all public meetings of the EMCAC and shall consider the EMCAC's recommendations concerning the management of Eastern Market.

(f) The market manager shall prepare, prior to the start of each District government fiscal year budget preparation cycle, a budget for the annual operating expenses and any capital improvements that may be required, together with any necessary cost/benefit analyses, and shall submit this budget to the EMCAC for its review and recommendations at a public meeting. The market manager shall then submit this budget, along with the EMCAC's recommendations, to the CPMO, the Mayor and the Council for inclusion in the District of Columbia budget.

(g) The market manager shall keep copies or electronic backup, stored off-site, by hard copy or tape, of the following:

(1) All applications for sub-leases;

(2) All space sub-leases issued; and

(3) All receipts collected for space charges for 10 years from their issuance, and for any other revenue received from any lease or agreement to occupy or use any portion of the Eastern Market Square.

(h) The market manager shall make these copies available for public inspection in hard copy or disk format.

(i) Within 30 days of each September 30, and April 30, after April 16, 1999, the market manager shall prepare a written report of operations for the previous 6 months including a summary of revenues by source and of expenditures by kind and shall submit a copy of this report to the CPMO and the EMCAC.

(j) The market manager, in consultation with the Tenants Council and the EMCAC, shall determine days of operation and hours for buying and selling for the following: (1) the Eastern Market building; and (2) the sidewalk market.

(k) Buying and selling shall not be permitted on the sidewalk market, except with the prior written approval of the market manager.

(l) The market manager shall regulate the goods sold by the various tenants with the objective of maintaining a diverse fresh food market with specialty stands for meat, poultry and eggs, fish and seafood, dairy products, fruits and vegetables, baked goods, dry groceries, herbs and spices, delicatessen items, and cut flowers and potted plants.

(m) The market manager may enter into a written contract with a tenant or tenants to occupy the Center Hall for purposes that are consistent with and supportive of other activities at Eastern Market and on the Eastern Market Square.

(n) The market manager shall direct that sidewalk market stalls be located on the North Carolina Avenue, 7th Street and C Streets sides of the Eastern Market building in a manner as to:

(1) Maintain ingress to, and egress from, the Eastern Market Building;

(2) Maintain access for fire fighters and to any fire hydrants;

(3) Maintain passageways of at least 5 feet in width for use by the public;

(4) Not obstruct the crosswalks on adjacent streets;

(5) Not encroach on trees or tree boxes; and

(6) Not impede use of the private right-of-way, which is adjacent to the Capitol Hill Natatorium at 639 North Carolina Avenue, S.E.

(o) The market manager shall assign sidewalk market stalls by giving priority to the following:

(1) Throughout the week, to farmers and other market vendors of agricultural products, the sidewalk market stalls along the Farmers' Line. Farmers shall receive first priority and food merchants and wholesalers of agricultural products shall have second priority, except that market vendors of agricultural products granted a right of first refusal pursuant to § 10-308 shall have priority to a space of the same or comparable size, frequency, and location over farmers granted a right of first refusal; and

(2) On Saturday and Sunday, (A) to artists, crafters, and other market vendors of hand-crafted goods; imported goods that are ethno-specific and are designed, produced and representative of the country of origin; and works of art, during the Saturday arts-and-crafts festival, and (B) to market vendors of antiques or vintage goods or collectibles; hand-crafted goods; imported goods that are ethno-specific and are designed, produced and representative of the country of origin; and works of art, during the Sunday Flea Market, priority to the sidewalk market stalls on the North Plaza, except that market vendors granted a right of first refusal pursuant to § 10-308 shall have priority to a space of the same or comparable size, frequency, and location over market vendors not granted a right of first refusal.

(p) Before a stall assignment shall be issued, the applicant shall have obtained any required business license and sales and use tax number, except that no vendor's license shall be required, and shall have paid the market manager a uniform processing fee.

(q) Each day no fewer then 5 sidewalk market stalls shall be available for use or sales by one or more community groups who have first obtained a stall assignment from the market manager to occupy the stall or stalls.

(r) The market manager may reassign a sidewalk market stall that is unoccupied as of a time determined by the market manager to a market vendor awaiting a space assignment or, if there are none, to a market vendor already occupying another space.

(s) The market manager, in consultation first with the Tenants Council and then with the EMCAC, shall set a schedule of daily space charges for sidewalk market stalls. A new space charge shall not take effect without 30-days written notice prominently posted in the North and South Halls. The schedule of daily space charges may provide a reduced daily space charge for occupying space Monday through Friday for market vendors paying a space charge on the preceding Saturday or Sunday. (Apr. 16, 1999, D.C. Law 12-228, § 6, 46 DCR 1066; Apr. 20, 1999, D.C. Law 12-264, § 22(c), 46 DCR 1066.)

Effect of amendments. — D.C. Law 12-264, in the introductory language of (b), inserted "on a self-sustaining basis"; and in (c), inserted "the" preceding "market manager shall be ineligible."

Legislative history of Law 12-264. — See note to § 10-301.

Legislative history of Law 12-228. — See note to § 10-301.

§ 10-306. Eastern Market building and tenants.

(a) Tenants shall not occupy any space or stand inside the Eastern Market building without first having entered into a written contract with the market manager.

(b) Each contract shall require that the tenant possess the required business license and sales and use tax number and comply with the laws, regulations and rules governing Eastern Market.

(c) Tenants may not stock or sell any class of item not specified on the tenant's written contract. Tenants may not sell food prepared for immediate consumption on the premises unless specifically authorized by the tenant's written contract.

(d) The market manager may enter into contracts with one or more tenants to sell and serve food prepared for immediate consumption on premises, but no more than 15% of the gross first floor space inside the Eastern Market building may be assigned for these purposes, except that no tenant selling or serving take-out food on August 1, 1997, shall be required to modify that tenant's operations as a result of the application of this provision. The market manager shall give priority to selling prepared foods typical of the Mid-Atlantic region, while encouraging a diversity of food offerings, and to tenants who are not affiliated with any franchise or chain fast-food organizations.

(e) The market manager may enter into a written contract with a tenant to operate the North Hall as a community arts center. The North Hall shall also be available for periodic use by community groups not involved in promoting the arts, and on a space-available basis, rented for fund-raising or for-profit activities. The contract shall specify a space charge that shall reflect rents or fees charged to art galleries, dance companies, theatrical companies and other similar arts-promoting entities, and to community-based or non-profit public activities.

(f) Community groups using the space for membership meetings or public forums, other than fundraising or other income-producing activities, shall be charged a nominal fee to compensate for administrative and security costs of the event.

(g) A tenant shall not occupy more space than is assigned to that tenant, and no alteration to stands or fixtures of any kind shall be made without the written approval of the market manager. Tenants shall keep and maintain their space or stands in a manner satisfactory to the market manager. The market manager may specify the location where a tenant shall receive commodities and the doors through which commodities may be conveyed. Tenants shall dispose of all garbage and rubbish as directed by the market manager.

(h) Alcoholic beverages shall not be sold in the Eastern Market building except pursuant to the following:

(1) An ABC license for special events; and

(2) The written consent of the market manager. (Apr. 16, 1999, D.C. Law 12-228, § 7, 46 DCR 1066.)

Legislative history of Law 12-228. — See note to § 10-301.

§ 10-307. Right of first refusal for existing inside operations.

(a) Any individual, association or corporation having a lease, contract, agreement, or legally binding understanding to operate one or more stalls in the South Hall, a breakfast or lunch restaurant in the Center and South Hall, a pottery studio in the Center Hall, a community- and arts-related space in the North Hall as of August 1, 1997, shall be offered the right of first refusal to sub-lease under substantially similar terms, except that:

(1) The terms shall incorporate the provisions of this chapter and any regulations promulgated pursuant to it; and

(2) Rents or other financial arrangements shall reflect fair market rents and practices, but rents and fees for the operator of the North Hall shall take into account that certain activities will be charged only nominal fees.

(b) Annual rent increases for any operators shall be limited to 102% of the Consumer Price Index ("CPI"), or to an additional amount to reflect the cost of additional services provided, except that in no instance shall the annual increase exceed 110% of the CPI. (Apr. 16, 1999, D.C. Law 12-228, § 8, 46 DCR 1066.)

Legislative history of Law 12-228. — See note to § 10-301.

§ 10-308. Right of first refusal for existing sidewalk operations.

(a) Any farmer or other market vendor of agricultural products who has operated one or more stalls on the sidewalk at any time within the last 2 years shall be offered a right of first refusal to continue such operations under substantially similar terms, except that:

(1) The terms shall incorporate the provisions of this chapter and any regulations promulgated pursuant to it, provided that the farmer or market vendor of agricultural products may continue to sell the type of goods sold during the 2-year period prior to April 16, 1999; and

(2) Space charges or other financial arrangements shall reflect fair market practices.

(b) Any non-food market vendor who, as of August 1, 1997, was a party to any arrangement to operate one or more stalls on the sidewalk shall have the right-of-first refusal to continue such operations under substantially similar terms, except that:

(1) The terms shall incorporate the provisions of this chapter and any regulations promulgated pursuant to it, provided that the non-food market vendor may continue to sell the type of goods being sold as of August 1, 1997; and

(2) Space charges or other financial arrangements shall reflect fair market practices. (Apr. 16, 1999, D.C. Law 12-228, § 9, 46 DCR 1066.)

Legislative history of Law 12-228. — See note to § 10-301.

§ 10-309. Other neighborhood vending.

(a) In order to maintain the theme and character of Eastern Market, any District of Columbia agency having jurisdiction over public property, including, but not limited to, the property under the jurisdiction of the District of Columbia Public Schools and the Department of Recreation and Parks, in the Eastern Market Special Use Area shall not permit retailing on such public property, except as generally is consistent with the activities at Eastern Market and with the prior written consent of the CPMO, after the review and comment of the market manager and the EMCAC, except that any contracts in place on August 1, 1997, shall be exempt from the provisions of this subsection.

(b) With the advice of the EMCAC, and after appropriate study, public hearing, and approval of the Department of Recreation and Parks, the market manager shall have the authority to extend operations and activities of the Eastern Market Square to the plaza in front of the Capitol Hill Natatorium.

(1) The CPMO shall not exercise this authority unless it is demonstrated there is sufficient demand from farmers, non-food market vendors, or the Sunday Flea Market vendors to create a viable extension of the Eastern Market Square.

(2) Any such extension shall not disturb the operations of the Capitol Hill Natatorium or impede the free flow of Natatorium users into and out of the building. (Apr. 16, 1999, D.C. Law 12-228, § 10, 46 DCR 1066.)

Legislative history of Law 12-228. — See note to § 10-301.

§ 10-310. Enforcement.

In the event that a market vendor violates any law, regulation, sidewalk market rule or condition of the market vendor's sub-lease as specified in the contract, the market manager may issue a market violation notice ("MVN") to the market vendor suspending the market vendor's sub-lease until the violation has been cured or corrected. If 3 MVNs are issued to a market vendor during the contract year, the market vendor's sub-lease shall be cancelled. If the market manager decides not to renew a market vendor's sub-lease, the market manager shall give the market vendor written notice on or before January 31. MVNs, cancellation, and any decision not to renew a market vendor's sub-lease shall be effective immediately but may be appealed to the Office of Property Management. (Apr. 16, 1999, D.C. Law 12-228, § 11, 46 DCR 1066.)

Legislative history of Law 12-228. — See note to § 10-301.

§ 10-311. Eastern Market Community Advisory Committee.

(a) There is hereby established the Eastern Market Community Advisory Committee ("EMCAC") to be comprised of no more than 11 voting members. The EMCAC shall be comprised as follows:

(1) One representative of Advisory Neighborhood Commission ("ANC") 6A, who shall be a serving ANC Commissioner;

(2) One representative of ANC 6B, who shall be a serving ANC Commissioner;

(3) One representative each of established, substantial Capitol Hill Community Organizations as follows:

(A) Capitol Hill Restoration Society, who, among other things, shall provide specific expertise in the area of historic preservation and land use policies;

(B) Capitol Hill Association of Merchants and Professionals, who, among other things, shall provide specific expertise relevant to business and retailing on Capitol Hill;

(C) Stanton Park Neighborhood Association;

(D) Eastern Market Preservation and Development Corporation, who, among other things, shall provide insights derived from its focus on Eastern Market issues; and

(E) Other organizations, which shall be determined upon a vote of 75% of the EMCAC members, to have demonstrated substantial membership, broad Capitol Hill activity focus, and longevity of establishment sufficient to warrant a representative on the EMCAC, subject to the limit on the number of EMCAC members established in this section of this chapter.

(4) One independent community resident;

(5) One member appointed by the Ward 6 member of the Council of the District of Columbia, to serve as a non-voting member;

(6) One member appointed by the Mayor, to serve as a non-voting member;

(7) One member appointed by the Eastern Market Tenants Council, to serve as a non-voting member; and

(8) One food market vendor and one non-food market vendor to be selected by those market vendors respectively.

(b) Each member of the EMCAC shall represent, and be appointed or elected by his or her constituency, in accordance with its internal procedures except that the independent member, as set out in subsection (a)(4) of this section, shall be selected by the EMCAC for such membership after such positions are advertised to the community for no less than 30 days. The initial selection shall be made as soon as practicable after formation of the EMCAC.

(c) Members of the EMCAC shall serve for 2 year terms, except that representatives of ANC 6A and 6B shall serve for periods corresponding to their service as Commissioners. No member shall serve for more than 4 years in any 6-year period. The ANCs shall identify their EMCAC representatives within 45 days after April 16, 1999. To create staggered terms, the initial non-ANC members shall determine by lot that half shall serve for one year.

(d) With the exception of the non-voting representative of the Tenants Council and the voting representatives of the food market vendors and

non-food market vendors, no member of the EMCAC shall have an economic interest in, or fiduciary responsibility for, any business or other activity operated or conducted on the Eastern Market Square, or subject to control or regulation under this chapter.

(e) All members of the EMCAC shall serve without compensation. Direct expenses may be reimbursed according to policies to be determined by the EMCAC.

(f) The members of the EMCAC shall meet no later than 45 days of April 16, 1999, and shall establish suitable bylaws governing its operations, including provisions for the election of a chair, vice-chair and other offices as deemed necessary.

(g) The EMCAC shall have the following responsibilities:

(1)(A) Review and comment to the CPMO in preparing each RFP which shall be issued by the District of Columbia for the selection of a market manager; and

(B) Review and comment on all summaries of proposals received by the CPMO in response to each RFP and provide comments to the CPMO on the information reviewed by the EMCAC;

(2) Meet in public session at least quarterly to receive public comments on Eastern Market operations and activities;

(3) Review and comment in 30 days from the point that the EMCAC has notice on:

(A) The annual budget prepared by the market manager for the management of the Eastern Market Square;

(B) Any proposal by the market manager for an increase in the range of rates for vending on the sidewalk market;

(C) Any proposal for a capital improvement to the Eastern Market Square or the Eastern Market building; and

(D) Any proposal to expend monies from the Fund established in § 10-303 for the preservation and enhancement of Eastern Market and the Eastern Market Square; and

(4) Provide advice or comment to the market manager in the exercise of the market manager's responsibilities, for the purposes enumerated in this chapter and in regulations issued pursuant to this chapter, and specifically to provide for coordination among activities in the Eastern Market and on the Eastern Market Square, as provided for in this chapter and accompanying regulations.

(h) The EMCAC shall be involved in any Eastern Market renovation as follows:

(1) Any plan for the renovation or restoration of Eastern Market and the Eastern Market Square, including the Eastern Market building or Farmers' Line shed, shall comply with the standards for rehabilitation of historic buildings issued by the U.S. Secretary of the Interior and shall include comments by the EMCAC.

(2) The CPMO, with the advice of the EMCAC and the market manager, in accordance with the provisions of this chapter and Chapter 11A of Title 1, shall develop any RFP to be issued by the District government for the selection of any architects or contractors to work on Eastern Market or the Eastern Market Square. All contracts shall be awarded in accordance with the

procedures in §§ 2620 through 2627 of Title 27 of the District of Columbia Municipal Regulations (Contracts and Procurements) except that the EMCAC's review shall be in addition to the architect-engineer evaluation board. The EMCAC shall review and comment on each proposal received in response to each RFP and shall comment on the proposals to the CPMO for final selection. Any EMCAC member with a personal or financial connection, or with an immediate family member with a personal or financial connection to any person or entity submitting a proposal, or to any contractor or subcontractor shall take no part in considering, evaluating, or recommending that or competing proposals, or that of any contractor or subcontractor.

(i) The EMCAC shall create at least two standing committees as follows:

(1) A Tenants Council comprised of one representative of each major activity, including, but not limited to, the farmers, South Hall stall holders, Center Hall tenants, North Hall tenants, arts and crafts market vendors, and flea market vendors. The Tenants Council shall meet regularly, and shall appoint a chair to conduct its meetings and one member to represent the Tenants Council as an non-voting member on the EMCAC. The Tenants Council may report from time to time to the EMCAC and to the market manager. The Tenants Council and the market manager shall work together to arrange off-site parking for tenants and market vendors. The Tenants Council shall assist the market manager in evaluating and amending standards for the conduct of operations and activities at Eastern Market and the Eastern Market Square.

(2) An Application Advisory Review Subcommittee, which shall be composed of experts, drawn as appropriate from existing farmers, merchants, and market vendors, to meet as necessary to evaluate applications for annual sidewalk sub-leases for conformity to criteria for sub-lease priority with respect to farmers, artists, crafters and other market vendors. Sub-leases may be issued provisionally by the market manager pending the review and advice of the Application Advisory Review Subcommittee.

(j) Subject to the provisions of this chapter and relevant regulation, the EMCAC may propose, and shall review and advise on recommendations by the market manager, to amend standards, operational guidelines, and rules for the conduct of operations and activities at Eastern Market and the Eastern Market Square. In making proposals, or considering recommendations, the market manager and the EMCAC shall take into account:

(1) Preserving the historic character and atmosphere of Eastern Market and the Eastern Market Square;

(2) Community opinion; and

(3) The goal of Eastern Market economic self-sufficiency.

(k) Provided the Mayor or his designee approves gifts and donations, the EMCAC may promote and seek outside funding for the preservation and enhancement of Eastern Market and the Eastern Market Square, through fund-raising events, contributions, grants, sales, the establishment of an endowment and other appropriate activities. Any funds raised in this way shall be deposited into the Fund. (Apr. 16, 1999, D.C. Law 12-228, § 12, 46 DCR 1066; Apr. 20, 1999, D.C. Law 12-264, § 22(d), 46 DCR 1066.)

Effect of amendments. — D.C. Law 12-264, in (d), inserted "and the voting representatives of the food market vendors and non-food market vendors."

Legislative history of Law 12-264. — See note to § 10-301.

Legislative history of Law 12-228. — See note to § 10-301.

§ 10-312. Insurance.

(a) The market manager shall maintain appropriate liability insurance. The market manager shall require each tenant and market vendor to maintain liability insurance, individually or as part of a group policy.

(b) The market manager, each tenant and each market vendor shall indemnify and hold harmless the District of Columbia from any liability arising out of each tenant's or market vendor's and market manager's respective activity. (Apr. 16, 1999, D.C. Law 12-228, § 13, 46 DCR 1066.)

Legislative history of Law 12-228. — See note to § 10-301.

§ 10-313. Reporting requirements.

No later than January 2, 2004, the CPMO shall file a report with the Council for review. The report shall contain information including, but not limited to, a report on the operations and management of Eastern Market for the past 5 year period, financial operations, a summary of all contractual activities, and an assessment of management operations including EMCAC functions and procedures and a report on the Market's capital status and needs. (Apr. 16, 1999, D.C. Law 12-228, § 14, 46 DCR 1066.)

Legislative history of Law 12-228. — See note to § 10-301.

PART II.

JUDICIARY AND JUDICIAL PROCEDURE.

TITLE 11. ORGANIZATION AND JURISDICTION OF THE COURTS.

Appendix.

Chapter 1. General Provisions.

§ 11-101. Judicial power.

Cited in Darby v. United States, App. D.C., 681 A.2d 1156 (1996), cert. denied, 519 U.S. 1034, 117 S. Ct. 596, 136 L. Ed. 2d 524 (1996); United States v. Stewart, 104 F.3d 1377 (D.C. Cir. 1997), cert. denied, 520 U.S. 1246, 117 S. Ct. 1856, 137 L. Ed. 2d 1058 (1997).

§ 11-102. Status of District of Columbia Court of Appeals.

Treatment of the Court of Appeals' decisions for Erie doctrine purposes. — When interpreting the common law of the District, the U.S. Court of Appeals follows the decisions of the District of Columbia Court of Appeals, which is, for Erie doctrine purposes, treated as if it were the highest court of the state. Rogers v. Ingersoll-Rand Co., 144 F.3d 841 (D.C. Cir. 1998).

Cited in Bridges v. Kelly, 84 F.3d 470 (D.C. Cir. 1996); Smith v. United States, 709 A.2d 78 (D.C. 1998).

Chapter 5. United States District Court for the District of Columbia.

Subchapter I. Jurisdiction.

§ 11-502. Criminal jurisdiction.

Congress intended to give power to try properly-joined local offense.

Under subsection (3), United States District Court for the District of Columbia has jurisdiction over a defendant charged solely with D.C. Code violations, when she is properly joined with a defendant charged on other counts with violations of federal statutes. United States v. Johnson, 46 F.3d 1166 (D.C. Cir. 1995).

Sufficient nexus required. — This provision allowing joinder with "any Federal offense" is limited by Rule 8 of the Federal Rules of Criminal Procedure, which requires a nexus between the events giving rise to the separate counts; where the Government alleged numerous violations of civil protection orders cumulating two weeks later in a federal violation of unlawful possession of a firearm while under a protective order, the close proximity in time combined with the nature of the alleged conduct is a sufficient nexus to provide jurisdiction. United States v. Drew, 5 F. Supp. 2d 16 (D.D.C. 1998).

District Court has jurisdiction to enter an Order of Abatement. — Where defendant is found guilty of various offenses under both federal and District law, including keeping a disorderly house, the district court properly has

jurisdiction to enter the mandatory order of abatement under § 22-2717. United States v. Wade, 152 F.3d 969 (D.C. Cir. 1998).

Cited in United States v. Sumler, 136 F.3d 188 (D.C. Cir. 1998); United States v. Wade, 992 F. Supp. 6 (D.D.C. 1997).

CHAPTER 7. DISTRICT OF COLUMBIA COURT OF APPEALS.

Subchapter I. Continuation and Organization.

§ 11-701. Continuation of court; court of record; seal.

Cited in Murrell v. District of Columbia Dep't of Emp. Servs., App. D.C., 697 A.2d 40 (1997).

§ 11-705. Assignment of judges; divisions; hearings.

Cited in Hardesty v. Draper, App. D.C., 687 A.2d 1368 (1997).

§ 11-707. Assignment of judges to and from Superior Court.

Cited in Potomac Elec. Power Co. v. Public Serv. Comm'n, App. D.C., 661 A.2d 131 (1995); Fred Ezra Co. v. Psychiatric Inst., App. D.C., 687 A.2d 587 (1996); Washington v. United States, App. D.C., 689 A.2d 568 (1997); Vaughan v. Nationwide Mut. Ins. Co., App. D.C., 702 A.2d 198 (1997); Courtney v. United States, App. D.C., 708 A.2d 1008 (1998); Demus v. United States, App. D.C., 710 A.2d 858 (1998); Kay v. Pick, App. D.C., 711 A.2d 1251 (1998); In re Spann, App. D.C., 711 A.2d 1262 (1998); Davis v. United States, App. D.C., 712 A.2d 482 (1998); Haqq v. Dancy-Bey, App. D.C., 715 A.2d 911 (1998); Wright v. United States, App. D.C., 717 A.2d 304 (1998); Woodard v. United States, App. D.C., 719 A.2d 967 (1998).

Subchapter II. Jurisdiction.

§ 11-721. Orders and judgments of the Superior Court.

"Final" construed.

In accord with 1st paragraph in bound volume. Camalier & Buckley, Inc. v. Sandoz & Lamberton, Inc., App. D.C., 667 A.2d 822 (1995).

Subject to limited exceptions, this section bars an appeal unless the order appealed from disposes of all issues in the case; it must be final as to all parties, the whole subject matter, and all of the causes of action involved. West v. Morris, App. D.C., 711 A.2d 1269 (1998).

In the absence of requisite determination and direction under Super. Ct. Civ. R. 54(b), an order disposing of claims against fewer than all of the parties is not appealable. West v. Morris, App. D.C., 711 A.2d 1269 (1998).

Partial summary judgment. — Partial summary judgment is immediately appealable as an order "changing or affecting the possession of property." Pierola v. Moschonas, App. D.C., 687 A.2d 942 (1997).

Collateral order doctrine.

A trial court's denial of a church's motion to dismiss a lawsuit charging the church with negligent failure to account for church funds was immediately appealable because the order plainly satisfied the three prerequisites for the narrow exception to the rule of finality: it (1) conclusively determined (by rejecting) the church's claim of immunity from suit under the First Amendment; (2) resolved a claim of immunity unrelated to merits of the negligence claim; and (3) would effectively cause the church to lose its immunity if the case proceeded to trial. Bible Way Church of Our Lord Jesus Christ v. Beards, App. D.C., 680 A.2d 419 (1996), cert. denied, 520 U.S. 1155, 117 S. Ct. 1335, 137 L. Ed. 2d 494 (1997).

Dismissal of counterclaim without prejudice. — A trial court's order dismissing appellant's counterclaim without prejudice is an appealable final order. Ukwu v. Bell Atlantic-

Washington, D.C. Inc., App. D.C., 652 A.2d 1109 (1995).

Exclusivity of Comprehensive Merit Personnel Act. — Whether the Comprehensive Merit Personnel Act was a physician's exclusive remedy against the District was not reviewable as an interlocutory order. District of Columbia v. Simpkins, App. D.C., 720 A.2d 894 (1998).

Collateral estoppel following dismissal of action. — When the other requirements for collateral estoppel have been established, a party who voluntarily dismisses the action and thereby prevents a previous determination of an issue from becoming embodied in a valid, final judgment on the merits may be estopped from relitigating that issue. Davis v. Davis, App. D.C., 663 A.2d 499 (1995).

Sanctions under Rule 11. — An order entitling a party to a Rule 11 award of costs and attorney's fees in an amount yet to be determined is a nonfinal order that is not otherwise appealable by statute. Francis v. Recycling Solutions, Inc., App. D.C., 695 A.2d 63 (1997).

Order "affecting property."

Although interlocutory orders generally are not appealable, if an order changes the status quo regarding possession of property, it is appealable; thus, order granting seller possession of property that had been in possession of buyer under an installment sales contract was appealable. Williams v. Dudley Trust Found., App. D.C., 675 A.2d 45 (1996).

Order "affecting property." — An interlocutory order is appealable under subsection (a)(2)(C) of this section only when the order changes the status quo with respect to specific and identifiable property. Bowie v. Nicholson, App. D.C., 705 A.2d 290 (1998).

Orders changing or affecting possession of property. — Under subsection (a)(2)(C) of this section, the Court of Appeals has jurisdiction over interlocutory orders changing or affecting the possession of property. Bowie v. Nicholson, App. D.C., 705 A.2d 290 (1998).

Damages. — A jury should consider claims for future loss of earnings in a personal injury action where the plaintiff can demonstrate that because of defendant's negligence her life expectancy will probably be drastically reduced. Bifurcation of the damages issues in such a case delays, and perhaps forecloses, the plaintiff from presenting her own claim and testifying before the jury which will decide her case, and causes the additional expense of a second trial for both sides. Moattar v. District of Columbia Foxhall Surgical Assocs., App. D.C., 694 A.2d 435 (1997).

A plaintiff injured by a physician's negligence in failing to diagnose breast cancer, knowing that it is more probable than not that her cancer will metastasize, cannot split her claim and wait until the cancer recurs before bringing suit. Under such circumstances, a plaintiff is entitled to include in her claim, and recover for, future consequences based on the probability of metastasis and of hastened death. Moattar v. District of Columbia Foxhall Surgical Assocs., App. D.C., 694 A.2d 435 (1997).

Denials, but not grants, of stays of litigation pending arbitration, etc.

Where case involved an arbitration clause of a lease agreement prepared and entered into prior to the District of Columbia Uniform Arbitration Act, the court had jurisdiction under paragraph (a)(1). Carter v. Cathedral Ave. Coop., App. D.C., 658 A.2d 1047 (1995).

Dismissal of civil complaint without prejudice appealable.

An order dismissing with prejudice all the claims of a complaint pursuant to a stipulation of dismissal for the purpose of appealing an adverse ruling, is final and appealable. Carl v. Children's Hosp., App. D.C., 657 A.2d 286 (1995), rev'd on other grounds, App. D.C., 702 A.2d 159 (1997).

Discovery orders.

A pretrial order granting or denying discovery from a non-party witness is not ordinarily final for purposes of appeal unless, in the case of an order granting discovery, the subject of the order refuses to comply and is adjudicated in contempt. Crane v. Crane, App. D.C., 657 A.2d 312 (1995).

Order of child support pendente lite. — An award of child support pendente lite does not constitute a sufficient change in the possession of property to enable the Court of Appeals to exercise its jurisdiction under subsection (a)(2)(C) of this section; a pendente lite support award does not alter, but rather maintains, the status quo regarding the possession of property. Bowie v. Nicholson, App. D.C., 705 A.2d 290 (1998).

Death of petitioner. — A deceased petitioner who has had the benefit of his appeal of right before he died and was left at the time of his death with only the opportunity to petition for discretionary further review is not entitled posthumously to a remand for abatement of the proceedings. West v. United States, App. D.C., 659 A.2d 1260 (1995).

Where appellant has had his appeal of right fully considered and ruled upon by the court and no further appeal of right remains, appellant's death does not warrant vacating the opinion and remanding the case for vacation of the conviction and abatement of the proceedings. West v. United States, App. D.C., 659 A.2d 1260 (1995).

An award of attorney's fees is final for purposes of appellate jurisdiction when the trial court has determined the quantum of attorney's fees to be paid, not when the trial court merely establishes entitlement to attorney's fees in an amount to be later determined. Natural Motion by Sandra, Inc. v. District of Columbia Comm'n on Human Rights, App. D.C., 687 A.2d 215 (1997).

Appeal after remand. — If, after remand, a party is dissatisfied with the action of the trial court, the only course available to obtain review in the Court of Appeals is to file a new notice of appeal once a final order or judgment is entered. That appeal is a new appeal, separate from the previous appeal that was terminated when the case was remanded. Bell v. United States, App. D.C., 676 A.2d 37 (1996).

Court had jurisdiction even though appeal "technically premature." — Where the claim against the last defendant was dismissed after the notice of appeal was filed but before the appeal was submitted to the court, the court had jurisdiction even though the appeal was "technically premature." West v. Morris, App. D.C., 711 A.2d 1269 (1998).

Cited in Cevern, Inc. v. Ferbish, App. D.C., 666 A.2d 17 (1995); Bridges v. Kelly, 84 F.3d 470 (D.C. Cir. 1996); Ripalda v. American Operations Corp., App. D.C., 673 A.2d 659 (1996); McFarlin v. District of Columbia, App. D.C., 681 A.2d 440 (1996); Darby v. United States, App. D.C., 681 A.2d 1156 (1996), cert. denied, 519 U.S. 1034, 117 S. Ct. 596, 136 L. Ed. 2d 524 (1996); Auerbach v. Frank, App. D.C., 685 A.2d 404 (1996); Masurovsky v. Green, App. D.C., 687 A.2d 198 (1996); Hardesty v. Draper, App. D.C., 687 A.2d 1368 (1997); Banov v. Kennedy, App. D.C., 694 A.2d 850 (1997); District of Columbia v. Ross, App. D.C., 697 A.2d 14 (1997); Bright v. United States, App. D.C., 698 A.2d 450 (1997); Flores v. United States, App. D.C., 698 A.2d 474 (1997); In re Johnson, App. D.C., 699 A.2d 362 (1997); United States v. Turner, App. D.C., 699 A.2d 1125 (1997); Gilliam v. United States, App. D.C., 707 A.2d 784 (1998); Scolaro v. District of Columbia Bd. of Elec. & Ethics, App. D.C., 717 A.2d 891 (1998).

§ 11-722. Administrative orders and decisions.

Standard of review.

Agency's interpretation is binding on the court unless it conflicts with the plain meaning of the statute or its legislative history, or is arbitrary, capricious, and an abuse of discretion, or otherwise not in accordance with the law. Kingsley v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 657 A.2d 1141 (1995).

Cited in Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997).

§ 11-723. Certification of questions of law.

Certification allowed. — Whether a plaintiff who has voluntarily assumed an unreasonable risk of incurring a particular injury can recover from a defendant who failed to take the last clear chance to prevent that injury, was certified to the D.C. Court of Appeals. Johnson v. Washington Metro. Area Transit Auth., 98 F.3d 1423 (D.C. Cir. 1996).

Court certified to the District of Columbia Court of Appeals the question of whether, under District of Columbia law, a plaintiff may recover against a defendant who has negligently or recklessly destroyed evidence that would have assisted the plaintiff in a claim against a third party. Holmes v. Amerex Rent-A-Car, 113 F.3d 1285 (D.C. Cir. 1997).

Cited in Noble v. United States Parole Comm'n, 82 F.3d 1108 (D.C. Cir. 1996); Doe ex rel. Fein v. District of Columbia, 93 F.3d 861 (D.C. Cir. 1996); Berk v. Sherman, App. D.C., 682 A.2d 209 (1996); Lasley v. Georgetown Univ., App. D.C., 688 A.2d 1381 (1997); East v. Graphic Arts Indus. Joint Pension Trust, 107 F.3d 911 (D.C. Cir. 1997); United States Parole Comm'n v. Noble, App. D.C., 693 A.2d 1084 (1997); Doe ex rel. Fein v. District of Columbia, App. D.C., 697 A.2d 23 (1997); Washington Metro. Area Transit Auth. v. Johnson, App. D.C., 699 A.2d 404 (1997); Dial A Car, Inc. v. Transportation, Inc., 132 F.3d 743 (D.C. Cir. 1998); United States Parole Comm'n v. Noble, App. D.C., 711 A.2d 85 (1998); East v. Graphic Arts Indus. Joint Pension Trust, App. D.C., 718 A.2d 153 (1998).

Subchapter III. Miscellaneous Provisions.

§ 11-741. Contempt powers.

Evidence insufficient to find criminal contempt. — Where the trial court stated it would consider no other evidence relating to the defendant's previous late appearances at court but would only consider his lateness on the day in question, evidence was insufficient to support a finding of criminal contempt. Thompson v. United States, App. D.C., 690 A.2d 479 (1997).

§ 11-743. Rules of court.

Cited in Talley v. Varma, App. D.C., 689 A.2d 547 (1997).

CHAPTER 9. SUPERIOR COURT OF THE DISTRICT OF COLUMBIA.

Subchapter II. Jurisdiction.

Subchapter I. Continuation and Organization.

§ 11-901. Continuation of courts; court of record; seal.

Constitutionality. — The creation of the Superior Court was not unconstitutional. Darby v. United States, App. D.C., 681 A.2d 1156 (1996), cert. denied, 519 U.S. 1034, 117 S. Ct. 596, 136 L. Ed. 2d 524 (1996).

Cited in United States v. Narcisse, 125 WLR 769 (Super. Ct. 1997); United States v. Stewart, 104 F.3d 1377 (D.C. Cir. 1997), cert. denied, 520 U.S. 1246, 117 S. Ct. 1856, 137 L. Ed. 2d 1058 (1997).

§ 11-902. Organization of the court.

Cited in In re K.E.W., 123 WLR 1769 (Super. Ct. 1995).

Subchapter II. Jurisdiction.

§ 11-921. Civil jurisdiction.

Jurisdiction of superior court and bankruptcy courts. — In the absence of legislative action, the superior court has general jurisdiction under this section over common law claims for relief. In contrast, the jurisdiction of the bankruptcy courts, like that of other federal courts, is grounded in and limited by statute. Powell v. Washington Land Co., App. D.C., 684 A.2d 769 (1996).

Jurisdiction over unlawful restriction case. — Superior Court had statutory jurisdiction over prisoner's petition for writ of habeas corpus directed against department of correction officials, where prisoner claimed unlawful restriction in violation of the Lorton Regulation Approval Act of 1982. Abdullah v. Roach, App. D.C., 668 A.2d 801 (1995).

Jurisdiction over claim arising in another state. — Superior Court had subject matter jurisdiction over a claim, irrespective of whether the underlying event took place in another state and both parties resided there: The Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia, unless jurisdiction is vested exclusively in a federal court. Begum v. Auvongazeb, App. D.C., 695 A.2d 112 (1997).

Periods of limitation. — If a claim is time-barred in the alternative jurisdiction when originally filed in the District, forum non conveniens will not permit dismissal without a waiver of the statute of limitations by the defendant; the trial court could not dismiss the case without assuring that the plaintiff had an available, alternative forum. Begum v. Auvongazeb, App. D.C., 695 A.2d 112 (1997).

Nothing in § 24-442 explicitly curtails equity jurisdiction conferred on the court by subsection (a) of this section. Women Prisoners v. District of Columbia, 899 F. Supp. 659 (D.D.C. 1995), vacated in part, 93 F.3d 910 (D.C. Cir. 1996).

Exhaustion of administrative proceedings. — Police officer's complaint challenging the failure of the District of Columbia Metropolitan Police Department to promote her to the rank of sergeant was subject to the processes of the Comprehensive Merit Personnel Act, and proceedings before the Office of Employee Appeals must run their course before she would be entitled to further appropriate

review and relief in trial court. Taggart-Wilson v. District of Columbia, App. D.C., 675 A.2d 28 (1996).

Cited in T.M.P. v. G.C.M., 124 WLR 233 (Super. Ct. 1995); District of Columbia v. Sierra Club, App. D.C., 670 A.2d 354 (1996); Williams v. Dudley Trust Found., App. D.C., 675 A.2d 45 (1996); United States v. Stewart, 104 F.3d 1377 (D.C. Cir. 1997), cert. denied, 520 U.S. 1246, 117 S. Ct. 1856, 137 L. Ed. 2d 1058 (1997); Voytsechovska v. Albert, 126 WLR 849 (Super. Ct. 1998); United States v. Wade, 992 F. Supp. 6 (D.D.C. 1997); United States v. Wade, 152 F.3d 969 (D.C. Cir. 1998).

§ 11-922. Transfer of civil actions to Superior Court.

Cited in United States v. Stewart, 104 F.3d 1377 (D.C. Cir. 1997), cert. denied, 520 U.S. 1246, 117 S. Ct. 1856, 137 L. Ed. 2d 1058 (1997); United States v. Wade, 992 F. Supp. 6 (D.D.C. 1997).

§ 11-923. Criminal jurisdiction; commmitment [commitment].

Cited in Darby v. United States, App. D.C., 681 A.2d 1156 (1996), cert. denied, 519 U.S. 1034, 117 S. Ct. 596, 136 L. Ed. 2d 524 (1996); United States v. Stewart, 104 F.3d 1377 (D.C. Cir. 1997), cert. denied, 520 U.S. 1246, 117 S. Ct. 1856, 137 L. Ed. 2d 1058 (1997); United States v. Anderson, 126 WLR 805 (Super. Ct. 1998); Francis v. United States, App. D.C., 715 A.2d 894 (1998).

§ 11-925. Rules regarding certain pending child custody cases.

(a) In any pending case involving custody over a minor child or the visitation rights of a parent of a minor child in the Superior Court which is described in subsection (b) [of this section]—

(1) at anytime after the child attains 13 years of age, the party to the case who is described in subsection (b)(1) [of this section] may not have custody over, or visitation rights with, the child without the child's consent; and

(2) if any person had actual or legal custody over the child or offered safe refuge to the child while the case(or other actions relating to the case) was pending, the court may not deprive the person of custody or visitation rights over the child or otherwise impose sanctions on the person on the grounds that the person had such custody or offered such refuge.

(b) A case described in this subsection is a case in which—

(1) the child asserts that a party to the case has been sexually abusive with the child;

(2) the child has resided outside of the United States for not less than 24 consecutive months;

(3) any of the parties to the case has denied custody or visitation to another party in violation of an order of the court for not less than 24 consecutive months; and

(4) any of the parties to the case has lived outside of the District of Columbia during such period of denial of custody or visitation. (Sept. 30, 1996, 110 Stat. 2979, Pub. L. 104-205, § 350(a).)

Applicability of § 350 of Pub. L. 104-205. — Section 350(c) of Pub. L. 104-205, 110 Stat. 2979, provided that the amendments made by § 350(a) of the act shall apply to cases brought in the Superior Court of the District of Columbia before, on, or after the date of the enactment of the act, and shall apply to any such case until the termination of the case. Public Law 104-205 was approved September 30, 1996.

Subchapter III. Miscellaneous Provisions.

§ 11-942. Subpenas [Subpoenas].

Cited in Jimmerson v. Kaiser Found. Health Plan of the Mid-Atlantic States, Inc., App. D.C., 663 A.2d 540 (1995); Scolaro v. District of Columbia Bd. of Elections & Ethics, App. D.C., 691 A.2d 77 (1997); In re Johnson, App. D.C., 699 A.2d 362 (1997).

§ 11-944. Contempt power.

Elements of criminal contempt defined. To be convicted of criminal contempt under this section, a defendant must engage in either willful disobedience of a court order causing an obstruction of justice, or contemptuous conduct committed in the presence of the court. Brooks v. United States, App. D.C., 686 A.2d 214 (1996).

Fear not a valid necessity defense. — Defendant's fear for himself and for his family's safety was not a valid basis for a necessity defense to criminal contempt charges arising from defendant's refusal to testify in a murder trial, where he had been given complete immunity for his testimony, where he was offered government protection, and where no harm or threat of harm had befallen defendant or his family. Budoo v. United States, App. D.C., 677 A.2d 51 (1996).

Evidence of threatening hand gestures unsupported. — Trial court's finding that defendant engaged in threatening hand motions, first articulated in the written certification produced some four days after the incident, which did not state how the defendant's gestures threatened the plaintiff's attorney, was unsupported by the evidence. Brooks v. United States, App. D.C., 686 A.2d 214 (1996).

Cited in In re Roxborough, App. D.C., 663 A.2d 553 (1995); United States v. Maye, App. D.C., 675 A.2d 57 (1996).

§ 11-946. Rules of court.

Cited in Talley v. Varma, App. D.C., 689 A.2d 547 (1997).

CHAPTER 11. FAMILY DIVISION OF THE SUPERIOR COURT.

§ 11-1101. Exclusive jurisdiction.

Adjudication of paternity. In a paternity action, where neither the parties nor the child resided in the District prior to the filing of action, where the child was not conceived in the District and had no other legal or personal connections with the District, and where the only connection with the District was the respondent's employment, but the pregnancy did not emanate from any such relationship, court lacked personal subject matter jurisdiction. T.M.P. v. G.C.M., 124 WLR 233 (Super. Ct. 1995).

Cited in L.T. v. J.C., 125 WLR 1309 (Super. Ct. 1997).

CHAPTER 13. SMALL CLAIMS AND CONCILIATION BRANCH OF THE SUPERIOR COURT.

Subchapter II. Jurisdiction and Procedures.

§ 11-1321. Exclusive jurisdiction of small claims.

Cited in Voytsechovska v. Albert, 126 WLR 849 (Super. Ct. 1998).

CHAPTER 15. JUDGES OF THE DISTRICT OF COLUMBIA COURTS.

Subchapter I. Appointment; Qualifications; Service of Judges.

§ 11-1501. Appointment and qualifications of judges.

Cited in In re K.E.W., 123 WLR 1769 (Super. Ct. 1995).

Subchapter II. The District of Columbia Commission on Judicial Disabilities and Tenure.

§ 11-1524. Compensation.

Members of the Tenure Commission shall serve without compensation for services rendered in connection with their official duties on the Commission. (July 29, 1970, 84 Stat. 493, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1524; Apr. 26, 1996, 110 Stat. [210], Pub. L. 104-134, § 133(a).)

Effect of amendments. — Public Law 104-134 rewrote this section.

§ 11-1526. Removal; involuntary retirement; proceedings.

Cited in In re K.E.W., 123 WLR 1769 (Super. Ct. 1995).

Subchapter III. Retirement.

§ 11-1561. Definitions.

For purposes of this subchapter —

* * * * *

(4) The term "fund" means the District of Columbia Judicial Retirement and Survivors Annuity Fund established by section 11-1570.

* * * * *

(8) The term "child" means —

* * * * *

(C) such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university or comparable recognized educational institution. For the purpose of this paragraph, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while the child is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than five months and if the child shows to the satisfaction of the Secretary of the Treasury that the child has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

* * * * *

(Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, §§ 11253(a)(1), (b); Oct. 21, 1998, 112 Stat. 2422, Pub. L. 105-274, § 2(e)(4); Oct. 21, 1998, 112 Stat. 2681-537, Pub. L. 105-277, § 804(e)(4); Apr. 20, 1999, D.C. Law 12-264, § 23, 46 DCR 2118.)

Section references. — This section is referred to in §§ 1-622.3, 1-623.4, 1-702, 1-781.2, 11-1568, 11-1568.1, and 11-1569.

Effect of amendments.

Section 11253 of Pub. L. 105-33, 111 Stat. 759, rewrote (4); and in (8)(C), substituted "Secretary of the Treasury" for "Commissioner [Mayor]."

Section 2(e)(4) of Pub. L. 105-274, 112 Stat. 2422, substituted "section" for "sections" in (4).

Section 804(e)(4) of Pub. L. 105-277, 112 Stat. 2681-537, substituted "section" for "sections" in (4).

D.C. Law 12-264 substituted "section" for "sections" in (4).

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

§ 11-1562. Eligibility for retirement.

* * * * *

(c) A judge with five years or more of judicial service, including civilian service performed by the judge which is creditable under section 8332 of title 5, United States Code, may voluntarily retire for a mental or physical disability which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of judicial duties. Such disability shall be established by furnishing to the Secretary of the Treasury a certificate of disability signed by a duly licensed physician, approved by the Surgeon General of the United States, and containing such information and

conclusions as the Secretary of the Treasury by regulation may require consistent with this subsection.

* * * * *

(Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, § 11253(a)(1).)

Effect of amendments. Section 11253(a)(1) of Pub. L. 105-33, 111 Stat. 759, in (c), substituted "Secretary of the Treasury" for "Commissioner [Mayor]."

§ 11-1563. Withholding of retirement payments; lump-sum credit.

(a) There shall be deducted and withheld from the basic salary of each judge appointed after October 31, 1964, and each judge appointed before November 1, 1964, who has elected to come within the provisions of this subchapter an amount equal to 3½ per centum of the judge's basic salary. Amounts so deducted and withheld shall be paid to the Secretary of the Treasury for deposit in the fund. Each judge subject to this section shall be deemed to consent and agree to such deductions from basic salary, and payment less such deductions shall constitute a full and complete discharge and acquittance of all claims and demands whatsoever for all regular service during the period covered by such payment, except the right to the benefits to which the judge shall be entitled under this subsection, notwithstanding any law, rule, or regulation affecting the judge's salary.

(b) If the judge has not previously so deposited, each judge subject to this section shall deposit in the fund, with interest computed in accordance with section 11-1564(d)(2), a sum equal to 3½ per centum of the judge's basic salary received for judicial service performed by the judge as a judge prior to the date the judge became subject to the District of Columbia Judges Retirement Act of 1964. Each judge may elect to make such deposits in installments during the continuance of the judge's judicial service in such amounts as may be determined in each instance by the Secretary of the Treasury. Notwithstanding the failure of any judge to make such deposits, credit shall be allowed for the service rendered but the retirement pay for such judge shall be reduced by 10 per centum of such deposit remaining unpaid unless the judge shall elect to eliminate the service involved for purposes of retirement salary computation, except as provided in section 11-1564(d).

(c) If any judge who is subject to this section is removed, resigns, or fails to be recommissioned or reappointed, the judge is entitled to be paid his [the judge's] lump-sum credit for retirement if application for payment is filed with the Secretary of the Treasury at least thirty-one days before the commencing date of any retirement salary for which the judge is eligible. The receipt of the lump-sum credit for retirement by the judge voids all retirement salary rights under this subchapter, until the judge is reemployed in judicial service subject to this subchapter.

* * * * *

(Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, §§ 11253(a)(1), (a)(4).)

Effect of amendments.
Section 11253(a) of Pub. L. 105-33, 111 Stat. 759, in (a), substituted "paid to the Secretary of the Treasury" for "paid to the Custodian of Retirement Funds (as defined in section 1-1802(6) [1-702(6)])"; and in (b) and (c), substituted "Secretary of the Treasury" for "Commissioner [Mayor]."

§ 11-1564. Computation of retirement salary; election to credit other service.

* * * * *

(d)

* * * * *

(2) Interest on deposits under this subsection and section 11-1567(b) shall be computed as follows:

(A) Interest shall be paid at a rate which (as determined by the Secretary of the Treasury) is equal to the average rate of return on investment (adjusted to the nearest one-eighth of 1 per centum) for the District of Columbia Judges' Retirement Fund (established by section 1-714) or the District of Columbia Judicial Retirement and Survivors Annuity Fund (established by section 11-1570) for the period beginning on the first day of the first month which begins after the end of the service period with respect to which the deposit is made and ending on the last day of the month which precedes the month during which the deposit is made if the judge makes a lump-sum payment or during which the judge makes the first payment if the judge makes installment deposits, except that —

* * * * *

(4) If a judge elects to be credited with service under subsection (c) of this section, the judge's lump-sum credit, or any remaining balance thereof, in the Civil Service Retirement and Disability Fund or in the retirement fund of any other retirement system for civilian employees of the Government of the United States or the District of Columbia, shall be transferred to the District of Columbia Judicial Retirement and Survivors Annuity Fund under section 11-1570. The judge shall be deemed to consent to the transfer. The transfer shall be a complete discharge and acquittance of all claims and demands against the retirement system from which the funds were transferred on account of the service so credited.

* * * * *

(6) In the case of a judge whose lump-sum credit has been transferred to the fund under paragraph (4) of this subsection and who has not elected a survivor annuity under section 11-1566, or prior corresponding provision of law, the Secretary of the Treasury shall refund to the judge any amount which the Secretary of the Treasury determines to be in excess of the amount of the deposit required by this subsection. In the case of a judge whose lump-sum credit has been transferred to the fund under paragraph (4) of this subsection and who, prior to the effective date of this section, had elected a survivor annuity and made deposits to the fund for survivor annuity purposes, the

Secretary of the Treasury shall refund to the judge any amount which the Secretary of the Treasury determines in excess of the amount of the deposit required by section 11-1567.

(7) If any civilian service performed by the judge which is creditable under section 8332 of title 5, United States Code, is not covered by the amount of the lump-sum credit transferred under paragraph (4) of this subsection, the judge may make deposit, on the standard basis prescribed by paragraph (1) of this subsection, with interest as provided in paragraph (2) of this subsection, in accordance with and subject to the applicable provisions of section 8334 (c) and (d) of that title, of the amount or amounts necessary for the judge to receive full credit for that service for the purposes of subsection (c) of this section. The deposit may be made, as the judge may elect, in installments, during the continuance of the judge's judical service, in such amounts as the Secretary of the Treasury may determine in each instance, or in a lump sum prior to or at the time of the judge's retirement under section 11-1562. A judge electing to make installment deposits shall not be given full credit for the service until the total required deposit is made.

* * * * *

(Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, §§ 11253(a)(1), (a)(3), (c); Oct. 21, 1998, 112 Stat. 2423, Pub. L. 105-274, § 2(e)(5); Oct. 21, 1998, 112 Stat. 2681-537, Pub. L. 105-277, § 804(e)(5).)

Effect of amendments.

Section 11253 of Pub. L. 105-33, 111 Stat. 759, in the introductory paragraph of (d)(2)(A), substituted "Secretary of the Treasury" for "Mayor of the District of Columbia"; in (d)(4), substituted "Judicial Retirement and Survivors Annuity Fund under section 11-1570" for "Judges' Retirement Fund established by section 1-1814(a) [1-714(a)]"; and in (d)(6) and (7), substituted "Secretary of the Treasury" for "Commissioner [Mayor]."

Section 2(e)(5) of Pub. L. 105-274, 112 Stat. 2423, substituted "(established by section 1-714) or the District of Columbia Judicial Retirement and Survivors Annuity Fund (established by section 11-1570)" for "(established by section 1-1814)" in (d)(2)(A); and substituted "Judicial Retirement and Survivors Annuity Fund under section 11-1570" for "Judges Retirement Fund established by section 124(a) of the District of Columbia Retirement Reform Act" in (d)(4).

Section 804(e)(5) of Pub. L. 105-277, 112 Stat. 2681-537, substituted "(established by section 1-714) or the District of Columbia Judicial Retirement and Survivors Annuity Fund (established by section 11-1570)" for "(established by section 1-1814)" in (d)(2)(A); and substituted "Judicial Retirement and Survivors Annuity Fund under section 11-1570" for "Judges Retirement Fund established by section 124(a) of the District of Columbia Retirement Reform Act" in (d)(4).

§ 11-1566. Survivor annuity; election; relinquishment.

(a) Any judge, whether or not subject to sections 11-1562 to 11-1565, may, by written election filed with the Secretary of the Treasury within six months after the date on which the judge takes office or is reappointed or recommissioned, or within six months after the judge marries, elect to be within the survivor annuity provisions of this subchapter.

(b) Any judge in regular active service or any retired judge, who shall have elected survivor annuity, and who after that election is unmarried and does not have a dependent child, may elect —

(1) to terminate the deductions and withholdings from the judge's salary under section 11-1567(a) and any installment payments elected to be made under section 11-1567(b); and

(2) to have paid to the judge the lump-sum credit for survivor annuity. Any election under this subsection shall be made in writing and filed with the Secretary of the Treasury.

* * * * *

(Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, §§ 11253(a)(1), (a)(2).)

Effect of amendments.
Section 11253(a) of Pub. L. 105-33, 111 Stat. 759, in (a), substituted "Secretary of the Treasury" for "Commissioner [Mayor]"; and in the last sentence of (b), substituted "Secretary of the Treasury" for "Mayor."

§ 11-1567. Survivor annuity; payments to fund.

(a) There shall be deducted and withheld from the salary (whether basic or retirement) of each judge who has elected survivor annuity a sum equal to 3.5 percent of that salary. The amounts so deducted and withheld shall, in accordance with such procedures as may be prescribed by the Secretary of the Treasury, be deposited in the fund. Every judge who elects survivor annuity shall be deemed thereby to consent and agree to the deductions from the judge's salary as provided in this subsection, and payment less such deductions shall constitute a full and complete discharge and acquittance of all claims and demands whatever for all judicial services rendered by such judge during the period covered by such payment, except the right to the benefits to which the judge or the judge's survivors shall be entitled under the survivor annuity provisions of this subchapter.

(b) If the judge has not previously so deposited, each judge who has elected survivor annuity shall deposit to the fund, with interest computed in accordance with section 11-1564(d)(2), a sum equal to 3.5 percent of the judge's salary received for judicial service and of retirement salary (but excluding salary for judicial service under section 11-1565); and a sum equal to 3.5 percent of the judge's basic salary, pay, or compensation for civilian service creditable under section 8332 of title 5, United States Code, with interest as provided in section 11-1564(d). Except to the extent that the Secretary of the Treasury has made refund to the judge under section 11-1564(d)(6), deposit is not required with respect to that portion of the service of the judge covered by the transfer, under section 11-1564(d)(4), of the judge's lump-sum credit to the fund. In addition, deposit may not be required for the types of service described in section 11-1564(d)(3). Each judge may elect to make deposits under this subsection in installments during the continuance of the judge's judicial service in such amounts as may be determined in each instance by the Secretary of the Treasury. Deposits under this subsection also may be made by the survivor of a judge.

(c) If a judge or survivor fails to make such deposits, credit shall be allowed for the service, but the annuity of the widow or widower of such judge shall be reduced by an amount equal to 10 per centum of the deposit required by this section, computed as of the date of the death of the judge, unless the widow or widower elects to eliminate the service not covered by deposit entirely from credit for computation purposes except as provided in section 11-1564(d)(3). (July 29, 1970, 84 Stat. 504, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1567; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 254(b)(3); June 6, 1986, 100 Stat.

514, Pub. L. 99-335, § 601(a)(1); June 13, 1994, Pub. L. 103-266, §§ 1(b)(72), (73), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, § 11253(a)(2).)

Effect of amendments.
Section 11253(a)(2) of Pub. L. 105-33, 111 Stat. 759, in (a) and (b), substituted "Secretary of the Treasury" for "Mayor."

§ 11-1568. Survivor annuity; entitlement; computation.

* * * * *

(d) Questions of disability or other eligibility requirements of a child under this section shall be determined by the Secretary of the Treasury who may order such medical or other examinations at any time as the Secretary of the Treasury deems necessary with respect to determining the facts concerning the disability of a child receiving or applying for an annuity under this subchapter. An annuity may be denied or suspended for failure to submit to examination.

* * * * *

(Oct. 21, 1998, 112 Stat. 2422, Pub. L. 105-274, § 2(e)(1); Oct. 21, 1998, 112 Stat. 2681-537, Pub. L. 105-277, § 804(e)(1).)

Effect of amendments.
Section 2(e)(1) of Pub. L. 105-274, 112 Stat. 2422, substituted "Secretary of the Treasury" for "Mayor" in two places in the first sentence of (d).

Section 804(e)(1) of Pub. L. 105-277, 112 Stat. 2681-537, substituted "Secretary of the Treasury" for "Mayor" in two places in the first sentence of (d).

§ 11-1568.1. Opportunity to revoke a previous survivor annuity election.

(1)

* * * * *

(B) A revocation under subparagraph (A) shall be submitted in writing to the Secretary of the Treasury.

* * * * *

(4)(A) Any individual who makes a revocation under paragraph (1) and who thereafter becomes eligible to make an election under section 11-1556 of title 11 of the District of Columbia Code may make such election only if such individual redeposits, to the credit of the District of Columbia Judicial Retirement and Survivors Annuity Fund referred to in section 11-1561(4) of such title, the full amount of the lump-sum payment made to such individual under paragraph (4), together with interest.

* * * * *

(Aug. 5, 1997, 111 Stat. 759, Pub. L. 105-33, § 11253(a)(3); Oct. 21, 1998, 112 Stat. 2423, Pub. L. 105-274, § 2(e)(6); Oct. 21, 1998, 112 Stat. 2681-538, Pub. L. 105-277, § 804(e)(6).)

Effect of amendments. — Section 11253(a)(3) of Pub. L. 105-33, 111 Stat. 759, in (1)(B), substituted "Secretary of the Treasury" for "Mayor of the District of Columbia."

Section 2(e)(6) of Pub. L. 105-274, 112 Stat. 2423, substituted "Judicial Retirement and Survivors Annuity Fund" for "Judges Retirement Fund" in (4)(A).

Section 804(e)(6) of Pub. L. 105-277, 112 Stat. 2681-538, substituted "Judicial Retirement and Survivors Annuity Fund" for "Judges Retirement Fund" in (4)(A).

§ 11-1568.2. Additional opportunity to make a survivor annuity election.

(1) Any individual who, on or before the date of the enactment of this Act, has not made an election under section 11-1566(a) of title 11 of the District of Columbia Code, to come within the purview of the survivor annuity provisions of subchapter III of chapter 15 of such title and is no longer entitled to make such an election may make such an election. Any such election shall be submitted in writing to the Secretary of the Treasury.

(2) An election under paragraph (1) shall be effective on the day it is received by the official referred to in such paragraph. (June 6, 1986, 100 Stat. 514, Pub. L. 99-335, § 601(d); Oct. 21, 1998, 112 Stat. 2422, Pub. L. 105-274, § 2(e)(2); Oct. 21, 1998, 112 Stat. 2681-537, Pub. L. 105-277, § 804(e)(2).)

Effect of amendments. — Section 2(e)(2) of Pub. Law 105-274, 112 Stat. 2422, substituted "Secretary of the Treasury" for "Mayor of the District of Columbia" in (1).

Section 804(e)(2) of Pub. Law 105-277, 112 Stat. 2681-537, substituted "Secretary of the Treasury" for "Mayor of the District of Columbia" in (1).

§ 11-1569. Survivor annuity; payment; order of precedence.

* * * * *

(b) In any case in which —

* * * * *

(2) the right of all persons entitled to an annuity under section 11-1568(c) based on the service of the judge shall terminate before a valid claim therefor shall have been established;

the lump-sum credit shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence, and such payment shall be a bar to recovery by any other person:

First, to the beneficiary or beneficiaries whom the judge may have designated in writing to the Secretary of the Treasury prior to the judge's death;

Second, if there be no such beneficiary, to the widow or widower of the judge;

Third, if none of the above, to the child or children of the judge and the descendants of any deceased children by representation;

Fourth, if none of the above, to the parents of the judge or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such judge;

Sixth, if none of the above, to such other next of kin of the judge as may be determined by the Secretary of the Treasury to be entitled under the laws of the domicile of the judge at the time of the judge's death.

Determination as to the widow, widower, or child of a judge for purposes of this subsection shall be made by the Secretary of the Treasury without regard to the definitions in section 11-1561.

* * * * *

(d) Any accrued annuity remaining unpaid upon the termination (other than by reason of death) of the annuity of any person based upon the service of a judge shall be paid to such person. Any accrued annuity remaining unpaid upon the death of any person receiving an annuity based upon the service of a judge shall be paid, upon establishment of a valid claim therefor, in the following order of precedence:

First, to the duly appointed executor or administrator of the estate of the annuitant;

Second, if there is no such executor or administrator, payment may be made, after the expiration of thirty days from the date of death of the annuitant, to such person or persons as may appear in the judgment of the Secretary of the Treasury to be legally entitled thereto, and such payments shall be a bar to recovery by any other person.

(e) Where any payment under sections 11-1566 to 11-1569 is to be made to a minor or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary by the law of the jurisdiction wherein the claimant resides or is otherwise legally vested with the care of the claimant or the claimant's estate. Where no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the jurisdiction wherein the claimant resides, payment may be made to any person who, in the judgment of the Secretary of the Treasury, is responsible for the care of the claimant, and the payment bars recovery by any other person. (July 29, 1970, 84 Stat. 506, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1569; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 254(a)(2); June 13, 1994, Pub. L. 103-266, §§ 1(b)(77)-(79), 108 Stat. 713; Oct. 21, 1998, 112 Stat. 2422, Pub. L. 105-274, § 2(e)(1); Oct. 21, 1998, 112 Stat. 2681-537, Pub. L. 105-177, § 804(e)(1).)

Effect of amendments.

Section 2(e)(1) of Pub. L. 105-274, 112 Stat. 2422, substituted "Secretary of the Treasury" for "Mayor" throughout the section.

Section 804(e)(1) of Pub. L. 105-277, 112 Stat. 2681-537, substituted "Secretary of the Treasury" for "Mayor" throughout the section.

§ 11-1570. The District of Columbia Judicial Retirement and Survivors Annuity Fund.

(a) There is established in the Treasury a fund known as the District of Columbia Judicial Retirement and Survivors Annuity Fund (hereafter in this

section referred to as the 'Fund'), which shall consist of the following assets:

(1) Amounts deposited by, or deducted and withheld from the salary and retired pay of, a judge under section 1563 or 1567 of this title, which shall be credited to an individual account of the judge.

(2) Amounts transferred from the District of Columbia Judges' Retirement Fund under section 124(c)(1) of the District of Columbia Retirement Reform Act, as amended by section 11252 of the Balanced Budget Act of 1997.

(3) Amounts deposited under subsection (d) [of this section].

(4) Any return on investment of the assets of the Fund.

(b)(1) The Secretary of the Treasury (hereafter in this section referred to as the "Secretary") shall be responsible for the administration of the Fund. The Secretary may carry out such responsibilities through an agreement with a Trustee or contractor (who may be the Trustee or contractor appointed to carry out responsibilities relating to Federal benefit payments under subtitle A of title XI of the Balanced Budget Act of 1997 and an enrolled actuary (as defined in section 7701(a)(35) of the Internal Revenue Code of 1986) who is a member of the American Academy of Actuaries (who may be the enrolled actuary engaged under such Act). Notwithstanding any other provision of District law or any other law, rule, or regulation, any Trustee, contractor, or enrolled actuary selected by the Secretary under this subsection may, with the approval of the Secretary, enter into one or more subcontracts with the District of Columbia government or any person to provide services to such Trustee, contractor, or enrolled actuary in connection with its performance of its agreement with the Secretary. Such Trustee, contractor, or enrolled actuary shall monitor the performance of any subcontract to which it is a party and enforce its provisions.

(2) The Secretary shall submit to the President an annual estimate of the expenditures necessary for the maintenance and operation of the Fund, and such supplemental estimates as may be required from time to time for the same purposes, according to law.

(3) The Secretary may cause periodic examinations of the Fund to be made by an enrolled actuary (as defined in section 7701(a)(35) of the Internal Revenue Code of 1986) who is a member of the American Academy of Actuaries.

(c)(1) Amounts in the Fund are available—

(A) for the payment of judges retirement pay, annuities, refunds, and allowances under this subchapter;

(B) to cover the reasonable and necessary expenses of administering the Fund under any agreement entered into with a Trustee, contractor, or enrolled actuary under subsection (b)(1), including any agreement with a department, agency, or instrumentality of the United States; and

(C) to cover the reasonable and necessary administrative expenses incurred by the Secretary in carrying out the Secretary's responsibilities under this subchapter.

(2) Notwithstanding any other provision of District law or any other law (other than the Internal Revenue Code of 1986), rule, or regulation—

(A) the Secretary may review benefit determinations under this subchapter made prior to the date of the enactment of the Balanced Budget Act of 1997 [August 5, 1997], and shall make initial benefit determination after such date; and

(B) the Secretary may recoup or recover, or waive recoupment or recovery of, any amounts paid under this subchapter as a result of errors or omissions by any person.

(d)(1) The Secretary shall pay into the Fund from the General Fund of the Treasury, not later than the close of each fiscal year, an amount equal to the sum of —

(A) the normal cost for the year;

(B) the annual amortization amount for the year (which may not be less than zero); and

(C) the covered administrative expenses for the year.

(2) For purposes of this subsection:

(A) The "original unfunded liability" is the amount that is the present value as of September 30, 1997, of future benefits payable from the Fund (net of the sum of the present value of future normal costs and plan assets as of such date).

(B) The "annual amortization amount" is the amount determined by the enrolled actuary to be necessary to amortize in equal annual installments (until fully amortized) —

(i) the original unfunded liability over a 30-year period;

(ii) a net experience gain or loss over a 10-year period; and

(iii) any other changes in actuarial liability over a 20-year period.

(C) The "covered administrative expenses" are the expenses determined by the Secretary (on an annual basis) to be necessary to administer the Fund.

(3) Deposits made under this subsection shall not be credited to the account of any individual.

(e) The Secretary shall invest such portion of the Fund as is not in the judgment of the Secretary required to meet current withdrawals. Such investments shall be in public debt securities with maturities suitable to the needs of the Fund, as determined by the Secretary, and bearing interest at rates determined by the Secretary, taking into consideration current market yields on outstanding marketable obligations of the United States of comparable maturities.

(f) None of the moneys mentioned in this subchapter shall be assignable, either in law or in equity, or be subject to execution, levy, attachment, garnishment, or other legal process (except to the extent permitted pursuant to the District of Columbia Spouse Equity Act of 1988 [Chapter 30 of Title 1]).

(g) Notwithstanding any other provision of District law, rule, or regulation, any civil action brought —

(1) by an individual to enforce or clarify rights to benefits from the Fund; or

(2) by the Secretary —

(A) to enforce any claim arising (in whole or in part) under this section or any contract entered into to carry out this section,

(B) to recover benefits improperly paid from the Fund or to clarify an individual's rights to benefits from the Fund, or

(C) to enforce any provision of this section or any contract entered into to carry out this section,

shall be brought in the United States District Court for the District of Columbia.

(h) For purposes of the Internal Revenue Code of 1986—

(1) the Fund shall be treated as a trust described in section 401(a) of the Code that is exempt from taxation under section 501(a) of the Code;

(2) any transfer to or distribution from the Fund shall be treated in the same manner as a transfer to or distribution from a trust described in section 401(a) of the Code; and

(3) the benefits provided by the Fund shall be treated as benefits provided under a governmental plan maintained by the District of Columbia.

(i) For purposes of the Employee Retirement Income Security Act of 1974, the benefits provided by the Fund shall be treated as benefits provided under a governmental plan maintained by the District of Columbia.

(j) To the extent that any provision of subpart A of part I of subchapter D of the chapter 1 of the Internal Revenue Code of 1986 (26 U.S.C. 401 et seq.) is amended after the date of the enactment of this subsection, such provision as amended shall apply to the Fund only to the extent the Secretary determines that application of the provision as amended is consistent with the administration of this subchapter.

(k) Federal obligations for benefits under this subchapter are backed by the full faith and credit of the United States. (July 29, 1970, 84 Stat. 507, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1570; Nov. 17, 1979, 93 Stat. 866, Pub. L. 96-122, § 124(b)(4); Aug. 5, 1997, 111 Stat. 756, Pub. L. 105-33, §§ 11251(a), 11253(a)(1); Oct. 21, 1998, 112 Stat. 2419, Pub. L. 105-274, § 2(a); Oct. 21, 1998, 112 Stat. 2681-533, Pub. L. 105-277, § 804(a).)

Effect of amendments. — Section 11251(a) of Pub. L. 105-33, 111 Stat. 756, rewrote the section.

Section 11253(a)(1) of Pub. L. 105-33, 111 Stat. 759, amended the previous version of the section by substituting "Secretary of the Treasury" for "Commissioner [Mayor]."

Neither of the 1997 amendments referred to the other, and effect has been given to § 11251(a) of Pub. L. 105-33.

Section 2(a) of Pub. L. 105-274, 112 Stat. 2914, in (b)(1), substituted "subtitle A of title XI of the Balanced Budget Act of 1997" for "title I of the National Capital Revitalization and Self-Government Improvement Act of 1997)" in the second sentence and added the third and fourth sentences; in (b)(2), substituted "Secretary" for "chief judges of the District of Columbia Court of Appeals and Superior Court of the District of Columbia" and deleted "and the Secretary" following "President", "and appropriations" following "expenditures" and "and deficiency" following "supplemental"; rewrote (c) and (d)(1); in (d)(2)(A), substituted "September" for "June" and "net the sum of the present value of future normal costs" for "net the sum of future normal cost"; in (d)(3), deleted "shall be taken from sums available for that fiscal year for the payment of the expenses of the Court, and" following "subsection"; and added the subsections designated herein as (i) and (k).

Section 804(a) of Pub. L. 105-277, 112 Stat. 2681-533, in (b)(1), substituted "subtitle A of title XI of the Balanced Budget Act of 1997" for "title I of the National Capital Revitalization and Self-Government Improvement Act of 1997)" in the second sentence and added the third and fourth sentences; in (b)(2), substituted "Secretary" for "chief judges of the District of Columbia Court of Appeals and Superior Court of the District of Columbia" and deleted "and the Secretary" following "President", "and appropriations" following "expenditures" and "and deficiency" following "supplemental"; rewrote (c) and (d)(1); in (d)(2)(A), substituted "September" for "June" and "net the sum of the present value of future normal costs" for "net the sum of future normal cost"; in (d)(3), deleted "shall be taken from sums available for that fiscal year for the payment of the expenses of the Court, and" following "subsection"; and added (h) through (k).

Effective date of Pub. L. 105-274. — Section 2(f) of Pub. L. 105-274, 112 Stat. 2423, provides that § 2(a) of the act shall take effect October 1, 1998.

References in text.

Subtitle A of Title XI of the Balanced Budget Act of 1997, referred to in (b)(1) and (c)(2)(A), is subtitle A of Title XI of Pub. L. 105-33, 111 Stat. 731.

§ 11-1572. Regulations; effect on Reform Act.

(a) The Secretary is authorized to issue regulations to implement, interpret, administer, and carry out the purposes of this subchapter, and, in the Secretary's discretion, those regulations may have retroactive effect, except that nothing in this subsection may be construed to permit the Secretary to issue any regulation to retroactively reduce or eliminate the benefits to which any individual is entitled under this subchapter.

(b) This subchapter supersedes any provision of the District of Columbia Retirement Reform Act (Public Law 96-122) inconsistent with this subchapter and the regulations thereunder. (Oct. 21, 1998, 112 Stat. 2420, Pub. L. 105-274, § 2(b); Oct. 21, 1998, 112 Stat. 2681-535, Pub. L. 105-277, § 804(b).)

CHAPTER 17. ADMINISTRATION OF DISTRICT OF COLUMBIA COURTS.

Subchapter I. Court Administration.

Subchapter II. Court Personnel.

Subchapter III. Duties and Responsibilities.

Subchapter I. Court Administration.

§ 11-1701. Administration of District of Columbia court system.

* * * * *

(b) The Joint Committee shall have responsibility within the District of Columbia court system for the following matters:

* * * * *

(4) Submission of the annual budget requests of the District of Columbia Court of Appeals, the Superior Court of the District of Columbia, and the District of Columbia Court System as the integrated budget of the District of Columbia courts, except that such requests may be modified upon the concurrence of four of the five members of the Joint Committee.

* * * * *

(Aug. 5, 1997, 111 Stat. 752, Pub. L. 105-33, § 11242(a).)

Effect of amendments.
Section 11242(a) of Pub. L. 105-33, 111 Stat. 752, rewrote (b)(4).

§ 11-1703. Executive Officer of the District of Columbia courts; appointment; compensation.

* * * * *

(d) The Executive Officer shall receive the same compensation, including retirement benefits, as an associate judge of the Superior Court, except that the Executive Officer (if initially hired after October 1, 1997) shall be eligible for retirement under subchapter III of chapter 15 when the Executive Officer has completed 7 years of service as Executive Officer, whether continuous or not. (July 29, 1970, 84 Stat. 510, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1703; Oct. 30, 1984, 98 Stat. 3142, Pub. L. 98-598, § 3; Oct. 28, 1986, 100 Stat. 3328, Pub. L. 99-573, § 3; June 13, 1994, Pub. L. 103-266, § 1(b)(82), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 755, Pub. L. 105-33, § 11246(c).)

Effect of amendments.
Section 11246(c) of Pub. L. 105-33, 111 Stat. 756, added the exception at the end of (d).

Subchapter II. Court Personnel.

§ 11-1722. Director of Social Services.

(a) There shall be a Director of Social Services in the Superior Court who shall have charge of all juvenile social services for the Superior Court, subject to the supervision of the Executive Officer. The Director shall have no jurisdiction over any adult under supervision. With respect to juveniles, the Director shall provide intake procedures, counseling, education and training programs, probation services, and such other services as the court shall prescribe.

(b) To the maximum extent feasible, the Director shall coordinate with and utilize the services of appropriate public and private agencies within the District of Columbia, including the agency established by section 11233(a) [D.C. Code § 24-1233(a)] of the National Capital Revitalization and self-government [Self-Government] Improvement Act of 1997, and shall coordinate and provide administrative services to volunteers utilized by the Superior Court or any divisions thereof.

(c) As directed by the Executive Officer, the Director shall conduct studies and make reports relating to the utilization of juvenile social services as an adjunct to the Superior Court.

* * * * *

(Oct. 21, 1998, 112 Stat. 2681-147, Pub. L. 105-277, § 158(b).)

Effect of amendments.
Section 158(b) of Pub. L. 105-277, 112 Stat. 2681-147, inserted "juvenile" in the first sentence and rewrote the second sentence of (a); inserted "including the agency established by section 11233(a) of the National Capital Revitalization self-government Improvement Act of 1997" in (b); and inserted "juvenile" in (c).

D.C. Law Review. — For symposium, "The Unnecessary Detention of Children in the District of Columbia — Pre-initial hearing detention: Are the Police Department and Social Services intake following the law?", see 3 D.C. L. Rev. 193 (1995).

§ 11-1723. Fiscal Officer.

(a)

* * * * *

(3) The Fiscal Officer shall be responsible for the approval of vouchers and the internal auditing of the accounts of the courts and shall arrange for an annual independent audit of the accounts of the courts.

* * * * *

(Aug. 5, 1997, 111 Stat. 752, Pub. L. 105-33, § 11242(b).)

Effect of amendments.
Section 11242(b) of Pub. L. 105-33, 111 Stat. 752, rewrote (a)(3).

§ 11-1725. Appointment of nonjudicial personnel.

(a) Subject to the approval of the Joint Committee, the Executive Officer shall appoint, and may remove, the Fiscal Officer, and such other personnel whose principal function is to perform duties for both District of Columbia courts.

(b) The Executive Officer shall appoint, and may remove, the Director of Social Services, the clerks of the courts, the Auditor-Master, and all other nonjudicial personnel for the courts (other than the Register of Wills and personal law clerks and secretaries of the judges) as may be necessary, subject to —

(1) regulations approved by the Joint Committee; and

(2) the approval of the chief judge of the court to which the personnel are or will be assigned.

Appointments and removals of court personnel shall not be subject to the laws, rules, and limitations applicable to District of Columbia employees. (July 29, 1970, 84 Stat. 511, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1725; Aug. 5, 1997, 111 Stat. 752, Pub. L. 105-33, § 11242(c).)

Effect of amendments. — Section 11242(c) of Pub. L. 105-33, 111 Stat. 752, rewrote (b).

Cited in Public Defender Serv. v. Saint-Preux, App. D.C., 691 A.2d 1160 (1997).

§ 11-1726. Compensation and benefits for court personnel.

(a) In the case of nonjudicial employees of the District of Columbia courts whose compensation is not otherwise fixed by this title, the Executive Officer shall fix the rates of compensation of such employees without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code. Any rates so established shall be subject to the limitation on pay fixed by administrative action in section 5373 of such title. In fixing the rates of compensation of nonjudicial employees under this section, the Executive Officer may be guided by the rates of compensation fixed for employees in the executive and judicial branches of the Federal Government or State or local governments occupying the same or similar positions or occupying positions of similar responsibility, duty, and difficulty.

(b)(1) Nonjudicial employees of the District of Columbia courts shall be treated as employees of the Federal Government solely for purposes of any of the following provisions of title 5, United States Code:

(A) Subchapter 1 of chapter 81 (relating to compensation for work injuries).

(B) Chapter 83 (relating to retirement).

(C) Chapter 84 (relating to the Federal Employees' Retirement System).

(D) Chapter 87 (relating to life insurance).

(E) Chapter 89 (relating to health insurance).

(2) The employing agency shall make contributions under the provisions referred to paragraph (1) [of this subsection] at the same rates applicable to agencies of the Federal Government.

(3) An individual who is a nonjudicial employee of the District of Columbia courts on the date of the enactment of the Balanced Budget Act of 1997 [August 5, 1997] may make, within 60 days after such date, an election under section 8351 or section 8432 of title 5, United States Code, to participate in the Thrift Savings Plan for Federal employees.

(c)(1) Judicial employees of the District of Columbia courts shall be treated as employees of the Federal Government for purposes of any of the following provisions of title 5, United States Code:

(A) Subchapter 1 of chapter 81 (relating to compensation for work injuries).

(B) Chapter 87 (relating to life insurance).

(C) Chapter 89 (relating to health insurance).

(2) The employing agency shall make contributions under the provisions referred to paragraph (1) [of this subsection] at the same rates applicable to agencies of the Federal Government.

(3) For purposes of section 8706(b) and section 8901(3)(B) of title 5, United States Code, benefits paid from the retirement system for judicial employees of the District of Columbia courts or from the system providing benefits to survivors of such employees shall be considered an annuity.

(4) For purposes of section 8901(3)(A) of title 5, United States Code, the retirement system for judicial employees of the District of Columbia courts shall be considered a retirement system for employees of the Government. (July 29, 1970, 84 Stat. 511, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1726; Aug. 5, 1997, 111 Stat. 755, Pub. L. 105-33, § 11246(b)(1).)

Effect of amendments. — Section 11246(b)(1) of Pub. L. 105-33, 111 Stat. 755, rewrote the section.

Effective date of § 11246(b) of Pub. L. 105-33. — Section 11246(b)(3) of Title XI of Pub. L. 105-33, 111 Stat. 755, provided that the amendments made by § 11246(b) shall apply with respect to all months beginning after the date on which the Director of the Office of Personnel Management issues regulations to carry out § 11-1726 (as amended by § 11246(b)(1)).

§ 11-1732. Hearing commissioners.

Powers.

Although not coextensive with the grant of power in paragraph (j)(5) of this section, Superior Court Criminal Rule 117 allows commissioners to exercise jurisdiction in criminal matters where the maximum incarceration period is 90 days in jail and the maximum fine is $300. United States v. Esparza, 124 WLR 1533 (Super. Ct. 1996).

In addition to the grant of jurisdiction to hear nonjury trials, this section, as implemented by Superior Court Criminal Rule 117, confers on

commissioners the jurisdiction to hear ancillary matters. United States v. Esparza, 124 WLR 1533 (Super. Ct. 1996).

Juvenile probable cause hearings. — Inasmuch as a juvenile probable cause hearing is not even truly adversarial in the first place, requiring only the barest presentation of evidence showing probable involvement by a juvenile, and which does not require "trial procedure," including cross-examination and discovery, it likewise does not necessitate the complicating application of all the rules of evidence or civil or criminal procedure, including the concept of "meaningful discovery." In re J.R., 123 WLR 1621 (Super. Ct. 1995).

Cited in In re Jones, 123 WLR 1917 (Super. Ct. 1995); T.M.P. v. G.C.M., 124 WLR 233 (Super. Ct. 1995); Fellens v. Alamo Rent-A-Car, 124 WLR 253 (Super. Ct. 1995); District of Columbia v. Baylor, 125 WLR 1665 (Super. Ct. 1997).

Subchapter III. Duties and Responsibilities.

§ 11-1742. Property and disbursement.

* * * * *

(b) The Executive Officer shall be responsible for the procurement of necessary equipment, supplies, and services for the courts and shall have power, subject to applicable law, tocreimburse the District of Columbia government for services provided and to contract for such equipment, supplies, and services as may be necessary.

* * * * *

(Aug. 5, 1997, 111 Stat. 752, Pub. L. 105-33, § 11242(d).)

Effect of amendments. — Section 11242(d) of Pub. L. 105-33, 111 Stat. 752, rewrote (b).

§ 11-1743. Annual Budget and Expenditures.

(a) The Joint Committee shall prepare and submit to the Mayor and the Council of the District of Columbia annual estimates of the expenditures and appropriations necessary for the maintenance and operations of the District of Columbia courts, and shall submit such estimates to Congress and the Director of the Office of Management and Budget after submitting them to the Mayor and the Council. All such estimates shall be included in the budget without revision by the President but subject to the President's recommendations.

(b) The District of Columbia Courts may make such expenditures as may be necessary to execute efficiently the functions vested in the Courts.

(c) All expenditures of the Courts shall be allowed and paid upon presentation of itemized vouchers signed by the certifying officer designated by the Joint Committee. All such expenditures shall be paid out of moneys appropriated for purposes of the Courts. (July 29, 1970, 84 Stat. 514, Pub. L. 91-358, title I, § 111; 1973 Ed., § 11-1743; June 13, 1994, Pub. L. 103-266, § 1(b)(92), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 752, Pub. L. 105-33, § 11242(e)(1).)

Effect of amendments.

Section 11242(e)(1) of Pub. L. 105-33, 111 Stat. 752, rewrote the section.

Authorization of Appropriations. — For provisions regarding authorization of appropriations for District of Columbia Courts, see § 11241 of Title XI of Pub. L. 105-33, 111 Stat. 751, the National Capital Revitalization and Self-Government Improvement Act of 1997.

Section 6(b)(1) and (c)(1) of Pub. L. 105-274, 112 Stat. 2425, amended § 11241 of Title XI of Pub. L. 105-33, 111 Stat. 751, the National Capital Revitalization and Self-Government Improvement Act of 1997.

CHAPTER 19. JURIES AND JURORS.

§ 11-1902. Definitions.

Cited in Howard v. United States, App. D.C., 663 A.2d 524 (1995); District of Columbia v. Baylor, 125 WLR 1665 (Super. Ct. 1997).

§ 11-1904. Jury system plan.

Cited in Carle v. United States, App. D.C., 705 A.2d 682 (1998), cert. denied, — U.S. —, 118 S. Ct. 1400, 140 L. Ed. 2d 658 (1998).

§ 11-1906. Qualification of jurors.

Bias. — Where the juror did not know until after the conclusion of the trial at which he served on the jury that the prosecutor was also prosecuting his son, the court could not conclude that the juror must be biased against the defendant on that ground. Young v. United States, App. D.C., 694 A.2d 891 (1997).

Conviction for felony. — It is not reasonable to conclude that convicted felons are always biased for the government and against criminal defendants: indeed the opposite seems more intuitive. Young v. United States, App. D.C., 694 A.2d 891 (1997).

The 10-year exclusion of convicted felons from jury qualification found in the Jury Plan of the Superior Court does not contradict the one-year exclusion from jury qualification prescribed by subsection (b)(2)(B) of this section; the statutory period is the minimum amount of time an ex-felon is excluded from jury qualification, which the Board of Judges could extend to a longer period. Carle v. United States, App. D.C., 705 A.2d 682 (1998), cert. denied, — U.S. —, 118 S. Ct. 1400, 140 L. Ed. 2d 658 (1998).

Ineligibility of juror not per se prejudicial. — The fact that a juror was statutorily ineligible to serve due to a felony conviction does not constitute prejudice per se meriting automatic reversal of the defendant's conviction. Young v. United States, App. D.C., 694 A.2d 891 (1997).

Failure to fully or truthfully answer Ridley question. — A juror's failure to answer a Ridley question about a relative's criminal record alone does not merit a mistrial. Young v. United States, App. D.C., 694 A.2d 891 (1997).

Cited in Howard v. United States, App. D.C., 663 A.2d 524 (1995).

§ 11-1908. Exclusion from jury service.

Right of peremptory challenge. — The right of peremptory challenge is protected by statute in the District of Columbia. Lyons v. United States, App. D.C., 683 A.2d 1066 (1996).

Cited in Lee v. United States, App. D.C., 699 A.2d 373 (1997).

§ 11-1912. Juror fees.

(a) Notwithstanding section 602(a) of the District of Columbia Self-Government and Governmental Reorganization Act, grand and petit jurors serving in the Superior Court shall receive fees and expenses at rates established by the Board of Judges of the Superior Court, except that such fees and expenses may not exceed the respective rates paid to such jurors in the Federal system.

* * * * *

(Aug. 5, 1997, 111 Stat. 755, Pub. L. 105-33, § 11246(a).)

Effect of amendments. — Section 11246(a) of Pub. L. 105-33, 111 Stat. 755, rewrote (a).

References in text. — Section 602(a) of the District of Columbia Self-Government and Governmental Reorganization Act, referred to in this section, is § 602(a) of the Act of December 24, 1973, 87 Stat. 813, Pub. L. 93-198, which is codified as § 1-233.

Section 11717(b) of Title XI of Pub. L. 105-33, 111 Stat. 786, provided that any reference in law or regulation to the "District of Columbia Self-Government and Governmental Reorganization Act" shall be deemed to be a reference to the "District of Columbia Home Rule Act," which is set out in Volume 1.

§ 11-1913. Protection of employment of jurors.

At-will employees. — As with other workers, at-will employees may not be discharged if the grounds for the firing are specifically proscribed by some statute. Washington v. Guest Servs., Inc., App. D.C., 703 A.2d 646 (1997).

§ 11-1916. Grand jury; additional grand jury.

Subsection (a) is constitutional.

Subsection (a) of this section, which substitutes Article I for Article III supervision of a federally-competent grand jury, does not unconstitutionally encroach on the judicial branch. United States v. Seals, 130 F.3d 451 (D.C. Cir. 1997).

§ 11-1917. Coordination and cooperation of courts.

Cited in United States v. Seals, 130 F.3d 451 (D.C. Cir. 1997).

CHAPTER 25. ATTORNEYS.

§ 11-2501. Admission to bar; regulations; prior admission.

Section references. — This section is referred to in § 47-2853.4.

Court can order F.B.I. to produce materials relevant to disciplinary action. — The court of appeals is a court of competent jurisdiction within the meaning of the Privacy Act of 1974, 5 U.S.C. § 552a(b)(11) so that it can order the Federal Bureau of Investigation to produce materials relevant to a disciplinary action. In re Tucker, App. D.C., 689 A.2d 1214 (1997).

Cited in In re Morrell, App. D.C., 684 A.2d 361 (1996); In re Abrams, App. D.C., 689 A.2d 6 (1997), cert. denied, — U.S. —, 117 S. Ct. 2515, 138 L. Ed. 2d 1017 (1997); In re Richardson, App. D.C., 692 A.2d 427 (1997).

§ 11-2502. Censure, suspension, or disbarment for cause.

Cited in In re Abrams, App. D.C., 689 A.2d 6 (1997), cert. denied, — U.S. —, 117 S. Ct. 2515, 138 L. Ed. 2d 1017 (1997); In re Drew, App. D.C., 693 A.2d 1127 (1997).

§ 11-2503. Disbarment upon conviction of crime; procedure for censure, suspension, or disbarment.

Procedures of subsection (a) satisfy due process requirements. — The procedures for determining moral turpitude under subsection (a) satisfy due process requirements. In re Sharp, App. D.C., 674 A.2d 899 (1996).

Denial of pre-suspension hearing did not violate due process. — Since this section does not prevent the application of Rule XI, District of Columbia Bar Rules, temporary suspension of an attorney without a pre-suspension hearing does not violate the attorney's right to due process. In re Richardson, App. D.C., 692 A.2d 427 (1997).

Entitlement to hearing. — For the purpose of determining a proper disciplinary sanction, an attorney who has been convicted of a misdemeanor is entitled to a hearing on whether that crime, on its particular facts, involved moral

turpitude. In re Sneed, App. D.C., 673 A.2d 591 (1996).

Ethical violations. — There is no requirement that an ethical complaint against an attorney be under oath. In re Clarke, App. D.C., 684 A.2d 1276 (1996).

Objection to defective charges waived. — Even assuming party failed to comply with § 11-2503's requirements, party waived the objection by submitting when he appeared and responded substantively to the charges. In re Clarke, App. D.C., 684 A.2d 1276 (1996).

Oath requirement. — The oath requirement of subsection (b) of this section was satisfied where the petitioner swore on information and belief rather than on personal knowledge. In re Morrell, App. D.C., 684 A.2d 361 (1996).

Conduct constituting moral turpitude. — Recognizing that moral turpitude has less than a finite definition, the Court of Appeals has nevertheless accepted three overlapping, but essentially consistent, definitions of conduct involving moral turpitude: (1) conduct which offends the generally accepted moral code of mankind; (2) an act of baseness, vileness, or depravity in the private and social duties which everyone owes to one's fellow human beings or to society in general, contrary to the accepted and customary rule of right and duty between one person and another; and (3) conduct contrary to justice, honesty, modesty, or good morals. In re Sneed, App. D.C., 673 A.2d 591 (1996).

Offense involving moral turpitude.

As the term is applied in disciplinary cases, moral turpitude has been held to include acts of intentional dishonesty for personal gain. Additionally, crimes involving theft of fraud are crimes involving moral turpitude. If the crime at issue is a misdemeanor, however, the court must look beyond its statutory definition to the underlying facts. In re Sneed, App. D.C., 673 A.2d 591 (1996).

The crime of embezzling while acting as a trustee or other officer of the court engaged in administration of a bankruptcy debtor's estate is a crime inherently involving moral turpitude, warranting disbarment. In re Sugarman, App. D.C., 677 A.2d 1049 (1996).

A conviction for felony embezzlement in Virginia, which requires a showing of fraudulent intent, is per se a crime involving moral turpitude, requiring disbarment. In re Eberhart, App. D.C., 678 A.2d 1023 (1996).

Attorney convicted of using phone in an attempt to possess cocaine with intent to distribute was guilty of crime involving moral turpitude and was therefore subject to disbarment. In re Robbins, App. D.C., 678 A.2d 37 (1996).

Conviction for embezzlement, which is an offense involving moral turpitude per se because an intent to defraud is an element of the offense, warranted disbarment. In re Greenspan, App. D.C., 683 A.2d 158 (1996).

Violation of Article 27, § 132 of the Maryland Code (misappropriating client funds while serving as fiduciary) is a crime that inherently involves more turpitude per se, and disbarment is appropriate sanction. In re O'Malley, App. D.C., 683 A.2d 464 (1996).

Absent exceptional circumstances, felony theft is considered a crime of moral turpitude per se in the District of Columbia. In re Wiley, App. D.C., 666 A.2d 68 (1995).

A felony involving intent to defraud constitutes a crime of moral turpitude. In re Reggie, App. D.C., 666 A.2d 69 (1995).

Because the crime of possession of a controlled substance with intent to distribute involves moral turpitude per se, a conviction in California warranted disbarment. In re Hawkins, App. D.C., 685 A.2d 753 (1996).

An attorney's conviction of two felony counts of child abuse involved moral turpitude per se, thus requiring the attorney's disbarment under subdivision (a) of this section. In re Wortzel, App. D.C., 698 A.2d 429 (1997).

An attorney convicted of willfully and knowingly making false statements in a passport application and of aiding and abetting others in the same conduct was guilty of a crime involving moral turpitude, mandating disbarment. In re White, App. D.C., 698 A.2d 483 (1997).

An attorney's conviction for conspiracy to possess cocaine on board a vessel with intent to distribute involved a crime of moral turpitude per se, mandating disbarment. In re Bateman, App. D.C., 699 A.2d 403 (1997).

Convictions for violations of federal mail and wire fraud statutes are crimes that involve moral turpitude per se, thus requiring disbarment. In re Ferber, App. D.C., 703 A.2d 142 (1997).

Felony conviction, in another jurisdiction (New York), for the criminal sale of a controlled substance in the third degree is a crime involving moral turpitude. In re Valentin, App. D.C., 710 A.2d 879 (1998).

Multiple convictions. — When there are multiple convictions, only one crime involving moral turpitude need be found for disbarment under subsection (a) of this section. In re Lipari, App. D.C., 704 A.2d 851 (1997).

Conspiracy to commit offenses involving moral turpitude. — Because a conspiracy conviction does not necessarily involve moral turpitude per se, the Court of Appeals must look to the offense that was the object of the conspiracy in order to determine whether moral turpitude is involved; if the offense is one of moral turpitude per se, then the conspiracy is also a crime of moral turpitude per se. In re Lipari, App. D.C., 704 A.2d 851 (1997).

Attorney's conviction for conspiracy to defraud the United States and conspiracy to embezzle funds from a federally insured financial institution involved crimes of moral turpitude and mandated attorney's disbarment. In re Lipari, App. D.C., 704 A.2d 851 (1997).

Offenses not in course of attorney-client relationship. — An act can constitute misconduct whether or not it occurred in the course of an attorney-client relationship; attorney's conviction in another state of a number of felonies, including taking indecent liberties with a child by a person in custodial or supervisory relationship, represented misconduct deserving of disbarment. In re Sharp, App. D.C., 674 A.2d 899 (1996).

Tax evasion. — An attorney's tax evasion was a crime of moral turpitude mandating disbarment. In re Casalino, App. D.C., 697 A.2d 11 (1997).

Moral turpitude not found.

Attorney who pleaded guilty to a misdemeanor count of willful failure to file federal income tax returns was not subject to automatic disbarment because the conduct did not constitute moral turpitude per se. In re Moore, App. D.C., 691 A.2d 1151 (1997).

Disbarment initiated by court. — A significant difference between this section and Bar Rule XI, § 17 is that disbarment pursuant to the rule is initiated by the lawyer involved subject to approval by the court, while disbarment pursuant to this section is initiated by the court. In re Ezrin, App. D.C., 703 A.2d 1246 (1997).

Disbarment mandatory. — Unlike "ordinary" disbarment, disbarment under subsection (a) of this section is mandatory when an attorney has been convicted of an offense involving moral turpitude; the court has no discretion to impose a lesser sanction such as suspension. In re Casalino, App. D.C., 697 A.2d 11 (1997).

Disbarment required upon finality of conviction and finding of moral turpitude. — The process contemplated by subsection (a) of this section involves certification to the court of a final conviction involving moral turpitude; upon such certification, disbarment by the court is automatic, regardless of circumstance or mitigating factors. In re Ezrin, App. D.C., 703 A.2d 1246 (1997).

Collateral attack on conviction will not defer discipline. — Collateral attacks such as claims of ineffective assistance of counsel take place after a final judgment of conviction, and thus cannot serve as a basis for deferring a ruling on disbarment. In re Matzkin, App. D.C., 665 A.2d 1388 (1995).

The court may impose disciplinary measures pursuant to subsection (a) while a collateral attack of attorney's underlying conviction is ongoing. In re Matzkin, App. D.C., 665 A.2d 1388 (1995).

Disbarment justified.

Where attorney was convicted on eight counts of mail fraud in United States District Court, disbarment was appropriate as the convictions were for commission of a crime involving moral turpitude per se. In re Bereano, App. D.C., 719 A.2d 98 (1998).

Reinstatement. — Where an attorney is seeking reinstatement after statutory disbarment for the commission of crimes of moral turpitude, scrutiny of the factors considered in reinstatement is heightened beyond the nature of the crimes themselves where the conduct is grave and closely bound up with the petitioner's role and responsibility as an attorney. In re Lee, App. D.C., 706 A.2d 1032 (1998).

Readmission after five years.

In accord with bound volume. In re Kerr, App. D.C., 675 A.2d 59 (1996).

Actions by other states. — A conviction of a crime involving moral turpitude mandates disbarment. Where there was substantial evidence to support a finding of moral turpitude, disbarment was necessary; the more lenient treatment that attorney received in other states was irrelevant. In re Sneed, App. D.C., 673 A.2d 591 (1996).

Attorney convicted for grand theft in California was disbarred on the ground that the crime of grand theft under California law, requiring a felonious intent to steal or take property in addition to the actual stealing or taking, involves moral turpitude per se. In re Caplan, App. D.C., 691 A.2d 1152 (1997).

Nothing in this section prohibits the court from establishing by court rule a separate reciprocal disciplinary proceeding for attorneys found guilty of misconduct in another jurisdiction, providing the reciprocal procedure satisfies constitutional requirements. In re Richardson, App. D.C., 692 A.2d 427 (1997).

Cited in In re Borders, App. D.C., 665 A.2d 1381 (1995); In re Fogel, App. D.C., 679 A.2d 1052 (1996); Rider v. United States, App. D.C., 687 A.2d 1348 (1996); In re Tucker, App. D.C., 689 A.2d 1214 (1997); In re Wiley, App. D.C., 697 A.2d 406 (1997).

CHAPTER 26. REPRESENTATION OF INDIGENTS IN CRIMINAL CASES.

§ 11-2601. Plan for furnishing representation of indigents in criminal cases.

Appropriations approved. — Public Law 104-194, 110 Stat. 2358, the District of Columbia Appropriations Act, 1997, provided that funds appropriated for expenses under § 11-2601 et seq. (the District of Columbia Criminal Justice Act, 88 Stat. 1090; Pub. L. 93-412) for the fiscal year ending September 30, 1997, shall be available for obligations incurred under the Act in each fiscal year since inception in fiscal year 1975.

When appointment is necessary. — Having determined that a hearing on a motion attacking conviction was necessary, the court was obligated to appoint counsel to represent defendant at that hearing. Brown v. United States, App. D.C., 656 A.2d 1133 (1995).

§ 11-2602. Appointment of counsel.

Postconviction relief.

Having determined that a hearing on a motion attacking conviction was necessary, the court was obligated to appoint counsel to represent defendant at that hearing. Brown v. United States, App. D.C., 656 A.2d 1133 (1995).

Failure to waive right to counsel. — Where there was nothing in the record showing that defendant was either informed of his right to counsel or that he waived that right, defendant was denied his statutory right to be represented by counsel during the hearing on his first motion. For that reason the first hearing was a nullity and did not serve as a bar to a successive § 23-110 petition. Brown v. United States, App. D.C., 656 A.2d 1133 (1995).

§ 11-2604. Payment for representation.

(a) Any attorney appointed pursuant to this chapter shall, at the conclusion of the representation or any segment thereof, be compensated at a fixed rate of $50 per hour. Such attorney shall be reimbursed for expenses reasonably incurred.

* * * * *

(Sept. 26, 1995, D.C. Law 11-52, § 805, 42 DCR 3684.)

Effect of amendments.

D.C. Law 11-52 substituted "$48" for "$50" in the first sentence of (a).

Emergency act amendments.

For temporary amendment of section, see § 505 of the Omnibus Budget Support Emergency Act of 1995 (D.C. Act 11-44, April 28, 1995, 42 DCR 2217) and § 805 of the Omnibus Budget Support Congressional Review Emergency Act of 1995 (D.C. Act 11-124, July 27, 1995, 42 DCR 4160).

Section 1001(b) of D.C. Act 11-44 provided that § 505 of that act shall expire on October 1, 1995.

Section 1701(b) of D.C. Act 11-124 provided that § 805 of that act shall expire on October 1, 1995.

Legislative history of Law 11-52. — Law 11-52, the "Omnibus Budget Support Act of 1995," was introduced in Council and assigned Bill No. 11-218, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on April 19, 1995, and June 6, 1995, respectively. Signed by the Mayor on July 13, 1995, it was assigned Act No. 11-94 and transmitted to both Houses of Congress for its review. D.C. Law 11-52 became effective on September 26, 1995.

Expiration of § 805 of Law 11-52. — Section 1701(b) of D.C. Law 11-52 provided that § 805 of the act shall expire on October 1, 1995.

§ 11-2605. Services other than counsel.

Counsel should state facts giving rise to need for services.

Although post-trial investigative services are allowable under subsection (a), where defendant failed to make the required showing that the services were necessary, it was not an abuse of discretion to deny a request for those services. Gresham v. United States, App. D.C., 654 A.2d 871, cert. denied, 516 U.S. 854, 116 S. Ct. 155, 133 L. Ed. 2d 99 (1995).

Cited in Carle v. United States, App. D.C., 705 A.2d 682 (1998), cert. denied, — U.S. —, 118 S. Ct. 1400, 140 L. Ed. 2d 658 (1998).

§ 11-2607. Preparation of Budget.

The joint committee shall prepare and include in its annual budget requests for the District of Columbia court system estimates of the expenditures and appropriations necessary for furnishing representation by private attorneys to persons entitled to representation in accordance with section 2601 of this title. (1973 Ed., § 11-2607; Sept. 3, 1974, 88 Stat. 1093, Pub. L. 93-412, § 2; June 13, 1994, Pub. L. 103-266, § 1(b)(123), 108 Stat. 713; Aug. 5, 1997, 111 Stat. 760, Pub. L. 105-033, § 11262(a).)

Effect of amendments.
Section 11262(a) of Pub. L. 105-33, 111 Stat. 760, rewrote the section.

§ 11-2608. Authorization of appropriations.

There are authorized to be appropriated for payment to the Joint Committee on Judicial Administration in the District of Columbia such sums as may be necessary to pay for representation by private attorneys and related services under this chapter. When so specified in appropriation Acts, such appropriations shall remain available until expended. (1973 Ed., § 11-2608; Sept. 3, 1974, 88 Stat. 1093, Pub. L. 93-412, § 2; June 15, 1976, D.C. Law 1-69, § 2, 23 DCR 531; Aug. 5, 1997, 111 Stat. 760, Pub. L. 105-033, § 11262(b); Oct. 21, 1998, 112 Stat. 2425, Pub. L. 105-274, § 6(b)(1).)

Effect of amendments. — Section 11262(b) of Pub. L. 105-33, 111 Stat. 760, rewrote the section.

Public Law 105-274 substituted "for payment to the Joint Committee on Judicial Administration in the District of Columbia" for "through the State Justice Institute".

§ 11-2609. Authority of Council.

Repealed.

(1973 Ed., § 11-2609; Sept. 3, 1974, 88 Stat. 1093, Pub. L. 93-412, § 2; Aug. 5, 1997, 111 Stat. 760, Pub. L. 105-33, § 11262(c)(1).)

APPENDIX.

DISTRICT OF COLUMBIA SELF-GOVERNMENT AND GOVERNMENTAL REORGANIZATION ACT.

TITLE IV. THE DISTRICT CHARTER.

PART C. THE JUDICIARY.

§ 433. Nomination and appointment of judges.

* * * * *

(b) No person may be nominated or appointed a judge of a District of Columbia court unless the person —

* * * * *

(5) has not served, within a period of two years prior to the nomination, as a member of the Tenure Commission or of the District of Columbia Judicial Nomination Commission.

* * * * *

(Sept. 9, 1996, 110 Stat. 2369, Pub. L. 104-194, § 131(b); Apr. 26, 1996, 110 Stat. 1321 [210], Pub. L. 104-134, § 133(b).)

Editor's notes. — Section 133(b) of Public Law 104-134, 110 Stat. 1321 [210], amended (b)(5) to read as follows:

"(5) Members of the commission shall serve without compensation for services rendered in connection with their official duties on the Commission."

Section 131(b) of Public Law 104-194, 110 Stat. 2369, repealed § 133(b) of Pub. L. 104-134 and provided that the provision of law amended by such section is hereby restored as if such section had not been enacted into law.

§ 434. District of Columbia Judicial Nomination Commission.

* * * * *

(b)

* * * * *

(5) Members of the Commission shall serve without compensation for services rendered in connection with their official duties on the Commission.

* * * * *

(Sept. 9, 1996, 110 Stat. 2369, Pub. L. 104-194, § 131(a).)

Effect of amendments.
Public Law 104-194, 110 Stat. 2369, rewrote (b)(5).

PART D. DISTRICT BUDGET AND FINANCIAL MANAGEMENT.

§ 445. District of Columbia courts' budget.

The District of Columbia courts shall prepare and annually submit to the Director of the Office of Management and Budget, for inclusion in the annual budget, annual estimates of the expenditures and appropriations necessary for the maintenance and operation of the District of Columbia court system. The courts shall submit as part of their budgets both a multiyear plan and a multiyear capital improvements plan and shall submit a statement presenting qualitative and quantitative descriptions of court activities and the status of efforts to comply with reports of the Comptroller General of the United States.

(1973 Ed., Title 11, appx., § 445, Dec. 24, 1973, 87 Stat. 800, Pub. L. 93-198, title IV, § 445.)

Effect of amendments. — Section 11243(a) of Pub. L. 105-33, 111 Stat. 753, rewrote the section.

TITLE 12. RIGHT TO REMEDY.

CHAPTER 1. ABATEMENT AND REVIVOR.

§ 12-101. Survival of rights of action.

Intent of act.

The Survival Act preserves for the benefit of the decedent's estate a right of action the decedent had before death; its purpose is to place the decedent's estate in the same position it would have occupied if the decedent's life had not been terminated prematurely. Lewis v. Lewis, App. D.C., 708 A.2d 249 (1998).

Party in interest. — An action under the Survival Act must be brought by the legal representative of the decedent's estate, and all proceeds recovered by the representative pass to the decedent's estate. Lewis v. Lewis, App. D.C., 708 A.2d 249 (1998).

Limitations of actions.

Because the Survival Act by its terms concerns itself with a right of action which accrued prior to the decedent's death, it does not create a new one; thus the applicable period of limitations is the period that governs the underlying claim. Arrington v. District of Columbia, App. D.C., 673 A.2d 674 (1996).

Damages for future loss of earnings. — A jury should consider claims for future loss of earnings in a personal injury action where the plaintiff can demonstrate that because of defendant's negligence her life expectancy will probably be drastically reduced. Bifurcation of the damages issues in such a case delays, and perhaps forecloses, the plaintiff from presenting her own claim and testifying before the jury which will decide her case, and causes the additional expense of a second trial for both sides. Moattar v. District of Columbia Foxhall Surgical Assocs., App. D.C., 694 A.2d 435 (1997).

Damages for future consequences. — A plaintiff injured by a physician's negligence in failing to diagnose breast cancer, knowing that it is more probable than not that her cancer will metastasize, cannot split her claim and wait until the cancer recurs before bringing suit. Under such circumstances, a plaintiff is entitled to include in her claim, and recover for, future consequences based on the probability of metastasis and of hastened death. Moattar v. District of Columbia Foxhall Surgical Assocs., App. D.C., 694 A.2d 435 (1997).

Punitive damages.

System of liability for wrongful acts is best served by not allowing awards of punitive damages against a tortfeasor's estate. Jonathan Woodner Co. v. Breeden, App. D.C., 665 A.2d 929 (1995), modified on reh'g, App. D.C., 665 A.2d 929 (1996), cert. denied, 519 U.S. 1148, 117 S. Ct. 1080, 137 L. Ed. 2d 215 (1997), 519 U.S. 1149, 117 S. Ct. 1083, 137 L. Ed. 2d 217 (1997).

Cited in Hawkins v. District of Columbia, 124 WLR 1125 (Super. Ct. 1996); Cole v. Washington Hosp. Ctr., 124 WLR 1973 (Super. Ct. 1996); Etchebarne-Bourdin v. Radice, 124 WLR 2253 (Super. Ct. 1996); District of Columbia v. Perez, App. D.C., 694 A.2d 882 (1997); Phillips v. District of Columbia, App. D.C., 714 A.2d 768 (1998); Flemmings v. District of Columbia, App. D.C., 719 A.2d 963 (1998).

CHAPTER 3. LIMITATION OF ACTIONS.

§ 12-301. Limitation of time for bringing actions.

Purposes of statutes of limitation are the prevention of stale claims and unfair surprise. Macklin v. Spector Freight Sys., 478 F.2d 979 (D.C. Cir. 1973).

Local statute of limitations borrowed in absence of specific federal statute.

Since there was no obvious federal statutory analog to cause of action under airline employee protection program, in case concerning violation of first-hire rights, since there was only a moderate federal policy interest in uniformity that would be frustrated by borrowing state law, and other District statutes of limitations did not apply, the three-year residual period of subsection (8) was used. Crocker v. Piedmont Aviation, Inc., 49 F.3d 735 (D.C. Cir.), cert. denied, 516 U.S. 865, 116 S. Ct. 180, 133 L. Ed. 2d 118 (1995).

Impaired judgment. — Impaired judgment alone is not enough to toll the statute of limitations. Hendel v. World Plan Executive Council, App. D.C., 705 A.2d 656 (1997).

The statute of limitations was not tolled by defendants' alleged "undue influence" upon the

plaintiff and resulting impairment to plaintiff's judgment. Hendel v. World Plan Executive Council, App. D.C., 705 A.2d 656 (1997).

Repressed memories of sexual abuse. — Where most or all of sexual abuse allegedly occurred during women's minority, the statute of limitations did not begin to run against either woman until she reached her majority, under D.C. Code § 12-302(a)(1), and where each woman had repressed any recollection of alleged wrongdoing, the discovery rule applied. Farris v. Compton, App. D.C., 652 A.2d 49 (1994).

The discovery exception to the District of Columbia statute of limitations extended to a suit, brought 20 to 40 years after alleged acts of sexual abuse, in which plaintiffs claimed that they had repressed their memories of the acts of an older sibling which allegedly took place beginning at age four and during the teenage years for one plaintiff and beginning at age 12 and through the teenage years for another plaintiff. Farris v. Compton, App. D.C., 652 A.2d 49 (1994).

A plaintiff alleging that he was molested as a teenager by his former priest, and that he had suffered from at least partial memory repression of the abuse at the time it occurred, was on inquiry notice of his claims at the time he began to recover memories of the event, even though he may not have fully appreciated the impact of the harm until later. Cevenini v. Archbishop of Wash., App. D.C., 707 A.2d 768 (1998).

Limitation periods for medical malpractice actions

When an action is alleged under the broad rubric of medical malpractice, it is the underlying act that is the basis for the alleged malpractice that determines the applicable period of limitations; the one year statute of limitations is applied to claims only for assault or battery or other intentional torts. McCracken v. Walls-Kaufman, App. D.C., 717 A.2d 346 (1998).

Note under seal.

Where promissory note was not under seal, and where deed of trust simply extended the obligation, even though it bore the word "seal," action on note was governed by the three-year statute of limitations; thus, action filed ten years after the note matured was barred. Huntley v. Bortolussi, App. D.C., 667 A.2d 1362 (1995).

"Instrument under seal."

Proprietary lease, a formal document governing a major legal transaction between a tenant and housing cooperative, which contained not only a corporate seal but a lengthy attestation clause affirming that the parties were affixing a corporate seal, was a sealed instrument to which the 12-year statute of limitations applied. Burgess v. Square 3324 Hampshire Gardens Apts., Inc., App. D.C., 691 A.2d 1153 (1997).

The presence of a corporate seal alone does not make a document an instrument for the purposes of subsection (6) because corporate seals are routinely employed for identification and as a mark of genuineness, which does not necessarily evince an intent to create a document under seal. Burgess v. Square 3324 Hampshire Gardens Apts., Inc., App. D.C., 691 A.2d 1153 (1997).

Accrual of cause of action — defamation. — Where plaintiff was aware of defamatory statements, of their publication, and of some injury at the time statement's were made, right of action as to each defamatory statement accrued at time of that statement's publication. Wallace v. Skadden, Arps, Slate, Meagher & Flom, App. D.C., 715 A.2d 873 (1998).

Action for fraud.

The proper limitation period for fraud claim is three years from the time the cause of action accrued. Hendel v. World Health Plan Executive Council, 124 WLR 957 (Super. Ct. 1996).

Because it was not evident from the record when the vocational student plaintiffs should have discovered the extent of problems at the National Business School and thus had reason to know of the defendant's alleged fraud in extending accreditation to the school, summary judgment was inappropriate on the issue as to whether the plaintiffs' claim was barred by the statute of limitations. Armstrong v. Accrediting Council for Continuing Educ. & Training, Inc., 961 F. Supp. 305 (D.D.C. 1997).

A three-year statute of limitations governs a claim of fraud; however, the timeliness of a fraud claim depends on the particular cause of action asserted, and the fact that plaintiff's product liability claim is barred by the statute of limitations does not mean that a fraud claim is also barred. Smith v. Brown & Williamson Tobacco Corp., 3 F. Supp. 2d 1473 (D.D.C. 1998).

Action for assault and battery. — Where the only tortious conduct alleged in the complaint and proved by an arrestee was assault and battery, the claim was subject to the one-year statute of limitations. District of Columbia v. Tinker, App. D.C., 691 A.2d 57 (1997).

Continuing tort.

In an action against prior possessors of land, seeking to recover remediation costs for petroleum from underground storage tanks, since defendants were engaged in a continuing tort, whose cessation did not occur until the property was remediated, this section was inapplicable and did not bar the plaintiff's claims. 325-343 E. 56th St. Corp. v. Mobil Oil Corp., 906 F. Supp. 669 (D.D.C. 1995).

Continuous representation rule in legal malpractice actions. — The continuous representation rule is applicable in the District of Columbia to legal malpractice claims; under this rule, when the injury to the client may have occurred during the period the attorney was retained, the malpractice cause of action does not accrue until the termination of the

attorney's representation concerning the particular matter. R.D.H. Communications, Ltd. v. Winston, App. D.C., 700 A.2d 766 (1997).

The primary purpose of the continuous representation rule is to avoid placing a client in the untenable position of suing his attorney while the latter continues to represent the client; for that reason, the rule is limited to situations in which the attorney who allegedly was responsible for the malpractice continues to represent the client in that case. R.D.H. Communications, Ltd. v. Winston, App. D.C., 700 A.2d 766 (1997).

The Court of Appeals has adopted the continuous representation rule as an exception to the discovery rule; because the Court has the authority to adopt the discovery rule as a way of defining "accrual," the Court also has authority to adopt the continuous representation rule, an exception to the discovery rule, as a way of defining "accrual." R.D.H. Communications, Ltd. v. Winston, App. D.C., 700 A.2d 766 (1997).

Discovery rule in legal malpractice actions. — The statute of limitations for a legal malpractice claim is governed by the discovery rule in cases where the relationship between the fact of injury and some tortious conduct is obscure at the time of injury. R.D.H. Communications, Ltd. v. Winston, App. D.C., 700 A.2d 766 (1997).

Medical malpractice actions.

The District's courts have adopted a single standard for all discovery rule cases: the same knowledge requirement (i.e. facts legally sufficient to put plaintiff on notice of a cause of action and to start the limitations period running) that has been adopted in non-fraud malpractice actions also applies in breaches of professional duty involving fraud and fraudulent concealment. Diamond v. Davis, App. D.C., 680 A.2d 364 (1996).

Continuous treatment rule. — The continuous treatment rule is applicable in the District of Columbia. Anderson v. George, App. D.C., 717 A.2d 876 (1998).

In medical malpractice actions involving continuing treatment for the same or related illness or injury, the cause of action is tolled until the doctor ceases to treat the patient in the specific matter at hand. Anderson v. George, App. D.C., 717 A.2d 876 (1998).

Discovery rule elements.

For discovery rule purposes, the plaintiff has a legal duty to investigate matters affecting her affairs with reasonable diligence under all the circumstances, and the presence or absence of fraud on the part of the defendant does not vary this duty. Diamond v. Davis, App. D.C., 680 A.2d 364 (1996) In accord with the 1997 supplement. Fred Ezra Co. v. Psychiatric Inst., App. D.C., 687 A.2d 587 (1996).

Under the discovery rule, a cause of action accrues when the plaintiff has knowledge of (or by the exercise of reasonable diligence should have knowledge of) (1) the existence of the injury, (2) its cause in fact, and (3) some evidence of wrongdoing. R.D.H. Communications, Ltd. v. Winston, App. D.C., 700 A.2d 766 (1997).

Discovery rule with respect to defamation cases. — Although the District of Columbia Court of Appeals has applied the discovery rule in several circumstances, it has not yet applied the rule to a defamation claim. Caudle v. Thomason, 942 F. Supp. 635 (D.D.C. 1996).

Discovery rule with respect to minority. — Plaintiffs alleging that they were molested as teenagers by their former priest were on inquiry notice of their claims at the time they turned 18 years old. Cevenini v. Archbishop of Wash., App. D.C., 707 A.2d 768 (1998).

Action for breach of contract, etc.

Case remanded for further proceedings to determine whether plaintiff real estate broker had actual notice of breach of contract and tortious interference claims within the three-year statute of limitations. Fred Ezra Co. v. Psychiatric Inst., App. D.C., 687 A.2d 587 (1996).

Fifteen-year limitations statute inapplicable to title dispute seeking monetary damages. — Claim for money damages based on GFA (gross floor area) excess, in title dispute, is not a claim for the recovery of lands, tenements, or hereditaments; thus, it is not entitled to a fifteen-year statute of limitations under subsection (1). Burka v. Aetna Life Ins. Co., 945 F. Supp. 313 (D.D.C. 1996).

Fraudulent concealment tolls the running of the statute of limitations. Firestone v. Firestone, 76 F.3d 1205 (D.C. Cir. 1996).

Tobacco litigation. — Plaintiffs sufficiently alleged that fraud claims against defendant tobacco company were not barred by the three-year statute of limitations by arguing that they did not have reason to know of defendant tobacco company's wrongdoing until internal documents were made public, five years after plaintiff's diagnosis of throat cancer. Smith v. Brown & Williamson Tobacco Corp., 3 F. Supp. 2d 1473 (D.D.C. 1998).

Summary judgment for defendant tobacco manufacturers was proper in a products liability claim where plaintiff should have known of defendant's wrongdoing when she was diagnosed with emphysema in the late 1980's and with throat cancer in 1992, but did not bring suit until 1997. Smith v. Brown & Williamson Tobacco Corp., 3 F. Supp. 2d 1473 (D.D.C. 1998).

Action for embezzlement. — Even construing an embezzlement allegation generously as the tort of unlawful conversion, it would be subject to this section's three-year limit. Amariglio v. National R.R. Passenger Corp., 941 F. Supp. 173 (D.D.C. 1996).

Three-year statute applies to Section 1981 claims. — The residual, three-year statute of limitations embodied in subsection (8) applies to 42 U.S.C. § 1981 claims. Harris v. Perini Corp., 948 F. Supp. 4 (D.D.C. 1996).

Intentional infliction of emotional distress.

While subdivision (8)'s three-year limitation applies to an emotional distress claim when the claim is intertwined with claims that also fall within the three-year limitation, when the plaintiff has alleged the same acts to support both a claim for assault and battery and a claim for intentional infliction of emotional distress, the statute of limitations for both claims is the one-year time period applicable to the assault and battery claim. Rendall-Speranza v. Nassim, 942 F. Supp. 621 (D.D.C. 1996), rev'd on other grounds, 107 F.3d 913 (D.C. Cir. 1997).

Government employee's negligence and emotional distress claims were remanded for refinement so that the court could determine the applicable statute of limitations period. Mittleman v. United States, 104 F.3d 410 (D.C. Cir. 1997).

Even though the last act of intentional infliction of emotional distress occurred within the limitations period, where the defendant was immune from liability for the allegedly tortious act under the International Organization Immunities Act, the claim was barred. Rendall-Speranza v. Nassim, 107 F.3d 913 (D.C. Cir. 1997).

Invasion of privacy actions.

Invasion of privacy is an action where a limitation is prescribed and, therefore, invasion of privacy does not fall within the three year limitations period of subsection (8). Grunseth v. Marriott Corp., 872 F. Supp. 1069 (D.D.C. 1995).

Because the sine qua non of a false light claim is giving publicity to a matter which places the plaintiff before the public in a false light, it is similar to libel and slander, which involve publication of false statements, and thus the District's one-year statute of limitations applied to a government employee's false light invasion of privacy claim. Mittleman v. United States, 104 F.3d 410 (D.C. Cir. 1997).

Asbestos-related injury.

Section 12-311 would not be applied to a plaintiff whose right of action had already accrued by the time it became effective. Owens-Corning Fiberglas Corp. v. Henkel, App. D.C., 689 A.2d 1224 (1997).

Equitable tolling claims not recognized. — The District of Columbia law does not recognize the concept of equitable tolling. Johnson v. Marcheta Investors Ltd. Partnership, App. D.C., 711 A.2d 109 (1998).

Tolling by mental disability. — A person is mentally unsound for purposes of tolling civil statute of limitations when the disability is of such a nature as to show plaintiff is unable to manage his business affairs or estate, or to comprehend his legal rights or liabilities; and, such disability must exist at the time the right of action accrues. McCracken v. Walls-Kaufman, App. D.C., 717 A.2d 346 (1998).

Action by discharged employee under Human Rights Act.

Claims of intentional and negligent infliction of emotional distress, which were predicated on the same conduct that gave rise to claims of discrimination under the Human Rights Act, were so intertwined with the Human Rights claims as to be subject to the one-year limitations period of the Human Rights Act. Mackey v. Committee for Economic Development, 126 WLR 1089 (Super. Ct. 1998).

Failure to raise statute of limitations before court bars issue on appeal. — Surety company for personal representative was an interested party before the court, and therefore, waived for appeal the affirmative defense of statute of limitations when it failed to file an objection to the Report of the Auditor-Master or raise the defense before the Probate division. In re Estate of Spinner, App. D.C., 717 A.2d 362 (1998).

Cited in District of Columbia v. Dunmore, App. D.C., 662 A.2d 1356 (1995); El-Fadl v. Central Bank of Jordan, 75 F.3d 668 (D.C. Cir. 1996); Ripalda v. American Operations Corp., App. D.C., 673 A.2d 659 (1996); Arrington v. District of Columbia, App. D.C., 673 A.2d 674 (1996); Sayyad v. Fawzi, App. D.C., 674 A.2d 905 (1996); State Farm Mut. Auto. Ins. Co. v. Hoang, App. D.C., 682 A.2d 202 (1996); United States v. Esparza, 124 WLR 1533 (Super. Ct. 1996); Dale v. Thomason, 962 F. Supp. 181 (D.D.C. 1997); Cooke-Seals v. District of Columbia, 973 F. Supp. 184 (D.D.C. 1997); Kennedy v. District of Columbia Rental Hous. Comm'n, App. D.C., 709 A.2d 94 (1998); Debose v. Ramada Renaissance Hotel, App. D.C., 710 A.2d 880 (1998); District of Columbia Preservation League v. District of Columbia Dep't of Consumer & Regulatory Affairs, App. D.C., 711 A.2d 1273 (1998); Mittleman v. United States, 997 F. Supp. 1 (D.D.C. 1998).

§ 12-302. Disability of plaintiff.

Minority. — Plaintiffs alleging that they were molested as teenagers by their former priest were on inquiry notice of their claims at the time they turned 18 years old. Cevenini v. Archbishop of Wash., App. D.C., 707 A.2d 768 (1998).

And is not tolled by erroneous release. — In plaintiff's suit for injuries allegedly suffered in the course of an arrest, the statute of limitations was not tolled by the erroneous release of the plaintiff until his final lawful release from prison but instead began to run irrevocably when the plaintiff was initially released. District of Columbia v. Tinker, App. D.C., 691 A.2d 57 (1997).

Impaired judgment. — Impaired judgment

alone is not enough to toll the statute of limitations. Hendel v. World Plan Executive Council, App. D.C., 705 A.2d 656 (1997).

The statute of limitations was not tolled by defendants' alleged "undue influence" upon the plaintiff and resulting impairment to plaintiff's judgment. Hendel v. World Plan Executive Council, App. D.C., 705 A.2d 656 (1997).

Psychological impairments not rendering person non compos mentis. — Under subsection (a), the only "psychological state" that affects the accrual of a statute of limitations provision is a showing that a plaintiff was, as a matter of law, mentally incompetent at the time the action accrued. If plaintiff's psychological impairment did not render her non compos mentis, then the impairment is factually and legally irrelevant and will not serve to toll the statute of limitations. Hendel v. World Health Plan Executive Council, 124 WLR 957 (Super. Ct. 1996).

Repressed memories of sexual abuse. — A plaintiff alleging that he was molested as a teenager by his former priest, and that he had suffered from at least partial memory repression of the abuse at the time it occurred, was on inquiry notice of his claims at the time he began to recover memories of the event, even though he may not have fully appreciated the impact of the harm until later. Cevenini v. Archbishop of Wash., App. D.C., 707 A.2d 768 (1998).

Incarceration. — Under subdivision (a)(3) of this section, the statute of limitations period is tolled during an individual's incarceration. Proctor v. Morrissey, 979 F. Supp. 29 (D.D.C. 1997).

Dismissal of actions brought during disability. — Where minor's next friend failed to cooperate in discovery, resulting in a dismissal of the complaint by the trial court, because the actual party injured was a minor, the dismissal should have been without prejudice. This allows the statute of limitations to begin running anew when the minor reaches majority. Godfrey v. Washington, App. D.C., 653 A.2d 371 (1995).

Cited in El-Fadl v. Central Bank of Jordan, 75 F.3d 668 (D.C. Cir. 1996); State Farm Mut. Auto. Ins. Co. v. Hoang, App. D.C., 682 A.2d 202 (1996); R.D.H. Communications, Ltd. v. Winston, App. D.C., 700 A.2d 766 (1997).

§ 12-309. Actions against District of Columbia for unliquidated damages; time for notice.

Section strictly construed.

In accord with first paragraph in bound volume. District of Columbia v. Ross, App. D.C., 697 A.2d 14 (1997); Doe ex rel. Fein v. District of Columbia, App. D.C., 697 A.2d 23 (1997).

Section functions as mandatory notice requirement. — This section is not, and does not function as, a statute of limitations; rather, it imposes a notice requirement on everyone with a tort claim against the District of Columbia, and compliance with its terms is mandatory as a prerequisite to filing suit against the District. District of Columbia v. Dunmore, App. D.C., 662 A.2d 1356 (1995).

Section not a statute of limitations. — This section is not, and does not function as, a statute of limitations. District of Columbia v. Ross, App. D.C., 697 A.2d 14 (1997).

Discovery rule does not apply to the notice requirement of this section. District of Columbia v. Dunmore, App. D.C., 662 A.2d 1356 (1995).

Section does not permit equitable tolling. — This section does not permit equitable tolling of the six month notice period. Doe ex rel. Fein v. District of Columbia, App. D.C., 697 A.2d 23 (1997).

Contents of notice to receive liberal construction.

Requirements with respect to the content of the notice, including the approximate time of the injury, are to be interpreted liberally, and in close cases doubts are resolved in favor of finding compliance with this section. Wharton v. District of Columbia, App. D.C., 666 A.2d 1227 (1995).

The content requirements of any notice under this section are to be interpreted liberally, and in close cases, doubts are to be resolved in favor of compliance. Doe ex rel. Fein v. District of Columbia, App. D.C., 697 A.2d 23 (1997).

Elements of sufficient notice.

A notice is sufficient if it recites facts from which it could be reasonably anticipated that a claim against the District might arise; such notice would suffice, therefore, if it described the injuring event with sufficient detail to reveal a basis for the District's potential liability. Doe ex rel. Fein v. District of Columbia, App. D.C., 697 A.2d 23 (1997).

Cause and circumstances must be sufficiently stated. — Failure to state the cause and circumstances of an injury is fatal. Under the "cause" element, the written notice must disclose both the factual cause of the injury and a reasonable basis for anticipating legal action as a consequence; under the "circumstances" element, the circumstances must be detailed enough for the District to conduct a prompt, properly focused investigation of the claim. Kirkland v. District of Columbia, 70 F.3d 629 (D.C. Cir. 1995).

Injury "sustained." — Injury is "sustained" pursuant to this section when the defendant's negligence causes a foreign substance with harmful potential to be introduced into the body, or at the latest, when the substance is discovered in the body and medical procedures

are given. District of Columbia v. Ross, App. D.C., 697 A.2d 14 (1997).

Lack of full awareness of seriousness of injury does not excuse failure to give notice.

In accord with bound volume. District of Columbia v. Ross, App. D.C., 697 A.2d 14 (1997).

Institution of administrative proceedings. — A notice could not legally provide the District with notice, within the statutory limitations period, of the institution of the action, where at the time the Mayor received the notice, no legal action had yet been instituted; the mere fact that administrative proceedings occurred cannot be construed as any kind of notice, whether formal or not, of a subsequent lawsuit. Arrington v. District of Columbia, App. D.C., 673 A.2d 674 (1996).

Police report only acceptable alternative to formal notice. — This section makes clear that police reports are the only acceptable alternatives to a formal notice; the court is not free to go beyond the express language of the statute and authorize any additional documents to meet the section's requirements. Doe ex rel. Fein v. District of Columbia, App. D.C., 697 A.2d 23 (1997).

Sufficiency required of police report.

Although this section expressly provides that a written police report can be a sufficient notice, the police report must contain the same information that is required in any other notice given under the statute; thus, in order to be considered a sufficient notice, a police report must include the approximate time, place, cause, and circumstances of the injury or damage. Doe ex rel. Fein v. District of Columbia, App. D.C., 697 A.2d 23 (1997).

This section does not require precise exactness with respect to the details of the police reports. Doe ex rel. Fein v. District of Columbia, App. D.C., 697 A.2d 23 (1997).

Omitting the place of an alleged injury is fatal under this section. Kirkland v. District of Columbia, 70 F.3d 629 (D.C. Cir. 1995).

Notice sufficient despite misdescription of time. — Notice provided to the District was sufficient to serve the statutory purposes of warning the District of potential litigation and providing a guide to further investigation where the only error was a misdescription of the date by only one day and of the time by twelve hours. Wharton v. District of Columbia, App. D.C., 666 A.2d 1227 (1995).

Congress has not authorized the Armory Board to be sued. Thus, plaintiff must give timely notice of his injury to the Mayor in order to maintain an action. Simmons v. District of Columbia Armory Bd., App. D.C., 656 A.2d 1155 (1995).

Appellate review. — Compliance with this section is a question of law that is reviewed de novo. District of Columbia v. Ross, App. D.C., 697 A.2d 14 (1997).

Cited in Doe ex rel. Fein v. District of Columbia, 93 F.3d 861 (D.C. Cir. 1996); Williams v. District of Columbia, 916 F. Supp. 1 (D.D.C. 1996); Holland v. O'Bryant, 958 F. Supp. 10 (D.D.C. 1997).

§ 12-310. Actions arising out of death or injury caused by defective or unsafe improvements to real property.

Applicability. — In an action against prior possessors of land, seeking to recover remediation costs for petroleum from underground storage tanks, this section was inapplicable and did not afford the defendants protection from potential liability, the defendants not being within the protected class of design professionals. 325-343 E. 56th St. Corp. v. Mobil Oil Corp., 906 F. Supp. 669 (D.D.C. 1995).

§ 12-311. Actions arising out of death or injury caused by exposure to asbestos.

Legislative intent. — The legislature intended to make the liberalizing provisions of this section applicable as soon as possible; the legislature could not have intended to direct the retroactive dismissal of actions timely filed under § 12-301 as now being untimely. Owens-Corning Fiberglas Corp. v. Henkel, App. D.C., 689 A.2d 1224 (1997).

Applicability. — This section would not be applied to a plaintiff whose right of action had already accrued by the time it became effective. Owens-Corning Fiberglas Corp. v. Henkel, App. D.C., 689 A.2d 1224 (1997).

TITLE 13. PROCEDURE GENERALLY.

CHAPTER 3. PROCESS AND PARTIES.

Subchapter II. Service of Process; Legal Representatives.

§ 13-334. Service on foreign corporations.

Jurisdiction under this section is not limited, etc.

Unlike the Long Arm Statute, which permits the exercise of jurisdiction only as to claims arising out of a defendant's contact with the District, this section confers jurisdiction over a defendant for all purposes. Etchebarne-Bourdin v. Bourdin, 124 WLR 2261 (Super. Ct. 1996).

"Doing business" defined.

While there is no bright line test to determine what constitutes "doing business," it has been defined as any continuing corporate presence in the forum state directed at advancing the corporation's objectives; similarly, "doing business" has been defined as continuous, systematic activity. Etchebarne-Bourdin v. Bourdin, 124 WLR 2261 (Super. Ct. 1996).

No basis for jurisdiction shown. — The District of Columbia did not have an adequate basis for asserting personal jurisdiction over defendants where plaintiff was a Virginia resident seeking medical treatment in connection with her pregnancy from Virginia doctors at their offices in Virginia and asserting that defendants' negligent treatment, all of which occurred in Virginia, resulted in her giving birth to a stillborn child in a Virginia hospital. Etchebarne-Bourdin v. Radice, 124 WLR 2253 (Super. Ct. 1996).

Discovery permitted to establish jurisdiction. — Where plaintiffs have not had the benefit of formal discovery, they were permitted sixty days from the date of the order accompanying the opinion within which to obtain the necessary jurisdictional facts or else dismiss the lawsuit against the foreign corporation. Richard v. Bell Atl. Corp., 946 F. Supp. 54 (D.D.C. 1996).

Cited in El-Fadl v. Central Bank of Jordan, 75 F.3d 668 (D.C. Cir. 1996).

CHAPTER 4. CIVIL JURISDICTION AND SERVICE OUTSIDE THE DISTRICT OF COLUMBIA.

Subchapter I. General Provisions.

§ 13-401. Relation to other provisions of law.

Cited in Bulin v. Stein, App. D.C., 668 A.2d 810 (1995).

Subchapter II. Bases of Personal Jurisdiction over Persons Outside the District of Columbia.

§ 13-421. Definition of person.

State is not a person. — Whether a state could plausibly fall within the term "legal or commercial entity," is not indicated. Because a state could not under any circumstances be domiciled in the District or organized under its laws, this section's text affirmatively implies that a state is not a "person" for its purpose. United States v. Ferrara, 54 F.3d 825 (D.C. Cir. 1995).

§ 13-422. Personal jurisdiction based upon enduring relationship.

Personal jurisdiction generally. — There are two methods by which a District of Columbia court may exercise jurisdiction over persons outside the District: (1) personal jurisdiction based upon an enduring relationship under this section; and (2) personal jurisdiction based upon conduct under § 13-423. Jennings v. Coutscoudis, 941 F. Supp. 5 (D.D.C. 1996).

Personal jurisdiction found. — D.C. court had personal jurisdiction over attorney in a legal malpractice action who was a domiciliary of the District of Columbia at the time the action was initiated, and was served with process in the District of Columbia. Proctor v. Morrissey, 979 F. Supp. 29 (D.D.C. 1997).

General jurisdiction not found. — Where plaintiffs did not claim that foreign corporation was domiciled in, organized under the laws of, or maintained its principal place of business in the District, and the defendants' affidavit did not support such a conclusion, federal district court did not have general personal jurisdiction under this section. Richard v. Bell Atl. Corp., 946 F. Supp. 54 (D.D.C. 1996).

Jurisdiction based on employment. — Jurisdiction did not arise in a paternity suit, since putative paternity was not derivative from the transaction of any business in the District and since employment in the District did not constitute "transacting business." T.M.P. v. G.C.M., 124 WLR 233 (Super. Ct. 1995).

Cited in El-Fadl v. Central Bank of Jordan, 75 F.3d 668 (D.C. Cir. 1996); Richard v. Bell Atl. Corp., 976 F. Supp. 40 (D.D.C. 1997).

§ 13-423. Personal jurisdiction based upon conduct.

I. GENERAL CONSIDERATION.

Link between activity conducted in jurisdiction and claim for relief. — There must be a practical link, consistent with due process, between activity conducted in the jurisdiction and claim for relief. Shoppers Food Whse. v. Moreno, App. D.C., 715 A.2d 107 (1998).

Scope of defendant's activities in District.

Federal district court lacked personal jurisdiction over defendant prison employee where plaintiff inmate alleged that defendant resided in Missouri, failed to allege that defendant conducted any business or made any contracts for services in the District of Columbia, and failed to allege that he was harmed by defendant in any way within the District. Meyer v. Federal Bureau of Prisons, 929 F. Supp. 10 (D.D.C. 1996).

Jurisdiction over nonresidents.

There are two methods by which a District of Columbia court may exercise jurisdiction over persons outside the District: (1) personal jurisdiction based upon an enduring relationship under § 13-422; and (2) personal jurisdiction based upon conduct under this section. Jennings v. Coutscoudis, 941 F. Supp. 5 (D.D.C. 1996).

The District of Columbia long-arm statute is the only basis upon which personal jurisdiction may be obtained over defendants who do not reside within or maintain a principal place of business in the District of Columbia. Meyer v. Federal Bureau of Prisons, 929 F. Supp. 10 (D.D.C. 1996).

Or even those not maintaining a business in the District. — This section, the District of Columbia long arm statute, is the only basis upon which personal jurisdiction may be obtained over defendants who do not reside within or maintain a principal place of business in the District of Columbia. Deutsch v. United States Dep't of Justice, 881 F. Supp. 49 (D.D.C. 1995), aff'd, 93 F.3d 986 (D.C. Cir. 1996).

Jurisdiction over foreign corporations. — Unlike this section, which permits the exercise of jurisdiction only as to claims arising out of a defendant's contact with the District, § 13-334 confers jurisdiction over a defendant for all purposes. Etchebarne-Bourdin v. Bourdin, 124 WLR 2261 (Super. Ct. 1996).

Burden of proof is on plaintiff, etc.

Plaintiff who failed to allege that any of the defendants had contacts with the District of Columbia, as defined by subdivisions (a)(1)-(4), did not meet his burden to show that this section applied, and the court therefore did not have personal jurisdiction over the defendants, none of whom resided or maintained their principal place of business in the District of Columbia. Jones v. City of Buffalo, 901 F. Supp. 19 (D.D.C. 1995).

Plaintiff's conduct alone not sufficient. — Plaintiff's conduct alone, or that of agents, cannot establish jurisdiction; the unilateral activity of those who claim some relationship with a nonresident defendant cannot satisfy the requirement of contact with the forum. Richter v. Analex Corp., 940 F. Supp. 353 (D.D.C. 1996).

Cited in Ashton Gen. Partnership v. Federal Data Corp., App. D.C., 682 A.2d 629 (1996); Richard v. Bell Atl. Corp., 976 F. Supp. 40 (D.D.C. 1997); Flocco v. State Farm Mutual Automobile Insurance Co., 126 WLR 581 (Super. Ct. 1998); Doe v. Islamic Salvation Front, 993 F. Supp. 3 (D.D.C. 1998).

II. "TRANSACTING ANY BUSINESS."

Constitutionality of paragraph (a)(1).

Paragraph (a)(1) is co-extensive with the U.S. Constitution's due process guarantee. Moreover, courts have broadly construed this provision. Schwartz v. CDI Japan, Ltd., 938 F. Supp. 1 (D.D.C. 1996).

Scope of paragraph (a)(1).

In accord with 1st paragraph in bound volume. Overseas Partners, Inc. v. Progen Musavirlik Ve Yonetim Hizmetleri, Ltd., 15 F. Supp. 2d 47 (D.D.C. 1998).

Paragraph (a)(1) would authorize the federal district court to exercise jurisdiction over a foreign corporation if the plaintiff's claims arise from corporation's transacting any business in the District, and the plaintiffs' claims are related to the acts forming the basis for personal jurisdiction. Richard v. Bell Atl. Corp., 946 F. Supp. 54 (D.D.C. 1996).

To establish personal jurisdiction under paragraph (a)(1) of this section, a plaintiff must show: (1) that the defendant transacted business in the District; (2) that the claim arose from the business transacted in the District; and (3) that the defendant had minimum contacts with the District such that the court's exercise of personal jurisdiction would not offend traditional notions of fair play and substantial justice. Schwartz v. CDI Japan, Ltd., 938 F. Supp. 1 (D.D.C. 1996).

Requirements of both subsections (a)(1) and (b) must be met. — In relying on the "transacting business" subsection of this section, one must meet both the requirements of subsection (a)(1) and subsection (b). Mallinckrodt Medical v. Sonus Pharmaceuticals, 989 F. Supp. 265 (D.D.C. 1998).

Merger of statutory and constitutional questions. — Since the "transacting any business" clause has been interpreted to provide jurisdiction to the full extent allowed by the Due Process Clause, and where there was no applicable federal long-arm statute, the statutory and constitutional jurisdictional questions, which are usually distinct, merged into a single inquiry. United States v. Ferrara, 54 F.3d 825 (D.C. Cir. 1995); Heroes, Inc. v. Heroes Found., 958 F. Supp. 1 (D.D.C. 1996).

Claims must arise from transaction providing basis for jurisdiction.

Paragraph (a)(1) of this section provides special, not general jurisdiction. Thus, the court must confine its jurisdictional analysis to those contacts of the defendant that could be said to have given rise to the claims charged in the plaintiff's complaint. Schwartz v. CDI Japan, Ltd., 938 F. Supp. 1 (D.D.C. 1996).

Subsection (b) of this section disallows claims that do not relate to the acts that form the basis for personal jurisdiction. Schwartz v. CDI Japan, Ltd., 938 F. Supp. 1 (D.D.C. 1996).

When jurisdiction over a person is based on the "transacting business" subsection of this section, only a claim for relief arising from acts enumerated in this section itself may be asserted against that person. Mallinckrodt Medical v. Sonus Pharmaceuticals, 989 F. Supp. 265 (D.D.C. 1998).

"Minimum contacts" requirement satisfied.

Where the individual defendants were citizens of foreign nations, but paid for plaintiff's medical expenses in D.C. and attempted to influence one of the treating physicians, such minimum contacts, purposefully established by the defendants, justified the court's exercise of jurisdiction. Jungquist v. Sheikh Sultan Bin Khalifa Al Nahyan, 940 F. Supp. 312 (D.D.C. 1996), rev'd in part, 115 F.3d 1020 (D.C. Cir. 1997).

The author of an internet political report, who wrote, published, and disseminated the report from an office in Los Angeles, engaged in a persistent course of conduct in the District of Columbia subjecting him to personal jurisdiction under this section; the contacts with the District consisted of (1) the interactivity of the web site between the defendant and District residents; (2) the regular distribution of the report via an online service provider, e-mail, and the world wide web to District residents; (3) defendant's solicitation and receipt of contributions from District residents; (4) the availability of the web site to District residents 24 hours a day; (5) defendant's interview with C-Span to promote his report; and (6) defendant's contacts with District residents who were sources for his report. Blumenthal v. Drudge, 992 F. Supp. 44 (D.D.C. 1998).

Activity subject to government contacts exception.

By choosing to sue the Food and Drug Administration in the District of Columbia, a company did not thereby submit itself to the jurisdiction of the D.C. courts for the purposes of an unrelated lawsuit brought against it by another company. Mallinckrodt Medical v. Sonus Pharmaceuticals, 989 F. Supp. 265 (D.D.C. 1998).

Under the "government contacts" exception to the "transacting business" provision of this section, a person or company does not subject itself to the jurisdiction of the courts of the District of Columbia merely by filing an application with a government agency, or by seeking redress of grievances from the Executive Branch or Congress. Mallinckrodt Medical v. Sonus Pharmaceuticals, 989 F. Supp. 265 (D.D.C. 1998).

Under the "government contacts" exception, a person or entity that has unsuccessfully petitioned the Executive Branch, an independent agency, or Congress, and then seeks redress before the federal or local courts in the District of Columbia, is not thereby "transacting business" for purposes of this section; when instituting a suit for that purpose, it continues to be protected by the "government contacts" exception. Mallinckrodt Medical v. Sonus Pharmaceuticals, 989 F. Supp. 265 (D.D.C. 1998).

Mere newsgathering not "doing business."

In accord with bound volume. Lohrenz v. Donnelly, 958 F. Supp. 17 (D.D.C. 1997).

Newsgathering exception not applicable to author of internet political report. — The author of an internet political report was not entitled to the benefit of the "news gathering exception" to subsection (a)(4) of this section. Blumenthal v. Drudge, 992 F. Supp. 44 (D.D.C. 1998).

Contracts involving deliberate and voluntary association with forum. — The "transacting any business" provision of the District's long arm statute embraces the contractual activities of a non-resident defendant that cause repercussions in the District; it is therefore sufficient that the suit be based on a contract which has a substantial connection with the District. The focus is on the quality and nature of contracts, and these contracts must illustrate a deliberate and voluntary association with the forum on the part of the defendant. Thus, a non-resident defendant may be subject to personal jurisdiction even if he has never been physically present in the forum state and where only contacts have been by mail or telephone. Schwartz v. CDI Japan, Ltd., 938 F. Supp. 1 (D.D.C. 1996).

Although a defendant's contract with a forum resident will not automatically establish minimum contacts sufficient to confer personal jurisdiction, factors including prior negotiations and contemplated future consequences, along with the terms of the contract and the parties' actual course of dealing, are relevant to the determination. Schwartz v. CDI Japan, Ltd., 938 F. Supp. 1 (D.D.C. 1996).

Contract between non-resident and resident not necessarily sufficient. — The mere existence of a contract between a non-resident and a resident is not a sufficient basis on which to claim jurisdiction over the non-resident in the District of Columbia. COMSAT Corp. v. Finshipyards S.A.M., 900 F. Supp. 515 (D.D.C. 1995).

Mail and wire communications alone insufficient. — The fact that mail and wire communications may have occurred between plaintiff in the District of Columbia and foreign defendant does not, standing alone, provide a basis for jurisdiction. COMSAT Corp. v. Finshipyards S.A.M., 900 F. Supp. 515 (D.D.C. 1995).

Soliciting business.

Grocery store advertising in The Washington Post and the District of Columbia Yellow Pages, where the advertisements were designed to target and attract District residents to nearby Maryland and Virginia stores, amounted to transacting business in District of Columbia. Shoppers Food Whse. v. Moreno, App. D.C., 715 A.2d 107 (1998).

Conspiracy theory.

Personal jurisdiction over defendants was not available under a conspiracy theory where plaintiffs failed to plead with sufficient particularity any overt acts in furtherance of the conspiracy within the District of Columbia. Jungquist v. Sheikh Sultan Bin Khalifa Al Nahyan, 115 F.3d 1020 (D.C. Cir. 1997).

Contracts related to claim insufficient to establish personal jurisdiction.

Where nonresident defendants were not alleged to have conducted any business or to have made any contracts for services in the District of Columbia and where no injury was alleged to have been suffered in the District of Columbia, the Court could not exercise jurisdiction over defendants because the long-arm statute upon which personal jurisdiction may be obtained was not satisfied. Marshall v. Reno, 915 F. Supp. 426 (D.D.C. 1996).

Agreement to pay for medical treatment. — District court lacked personal jurisdiction over defendant who agreed to pay for treatment of plaintiff and authorized plaintiff's transfer to the United States for treatment, but did not knowingly authorize or arrange for her treatment in the District of Columbia. Jungquist v. Sheikh Sultan Bin Khalifa Al Nahyan, 115 F.3d 1020 (D.C. Cir. 1997).

Contacts sufficient to satisfy jurisdictional prerequisites.

The fact that a firm's managing partner visited D.C. and gave business advice established sufficient minimum contacts and indicia of transacting business to justify exercising personal jurisdiction over the partner and his firm. Richter v. Analex Corp., 940 F. Supp. 353 (D.D.C. 1996).

By soliciting donations through an Internet home page and by soliciting donations in the District's local newspaper, the defendant, a New York charitable organization, purposely availed itself of the privilege of conducting activities within the District, and thus the court's exercise of jurisdiction over it would be reasonable. Heroes, Inc. v. Heroes Found., 958 F. Supp. 1 (D.D.C. 1996).

Foreign corporation had sufficient minimum contacts for personal jurisdiction where: (1) corporation actively sought out developer to discuss a project, (2) the parties negotiated terms in the District, (3) foreign agents visited the District to meet with potential subcontractors and financial institutions, and (4) the contract between the parties contemplated that developer would perform significant portions of the contract in the District. Overseas Partners, Inc. v. Progen Musavirlik Ve Yonetim Hizmetleri, Ltd., 15 F. Supp. 2d 47 (D.D.C. 1998).

It did not offend traditional notions of fair play and substantial justice to hold a foreign defendant subject to suit in the District, when defendant traveled to the District for the purpose of making fraudulent representations, and the effects of the fraudulent scheme of which he was a part, would be felt in the District. BCCI

Holdings (Luxembourg), S.A. v. Khalil, 20 F. Supp. 2d 1 (D.D.C. 1997).

Contacts insufficient to satisfy jurisdictional prerequisites.

Where contract was for the sale of a system in Michigan and was governed by Michigan law; there was to be no long-term relationship between the parties after the sale was completed; although negotiations took place in part by mail and wire into the District of Columbia, none of the principals were involved in negotiations or were present in the District at any time; and it was a mere fortuity that plaintiff chose Washington counsel to conduct negotiations, defendants' minimal contacts with the forum did not manifest a deliberate and voluntary association with the District that is necessary to invoke the jurisdiction of District courts. Cellutech, Inc. v. Centennial Cellular Corp., 871 F. Supp. 46 (D.D.C. 1994).

Where employees of the Federal Bureau of Prisons worked in New York or in Pennsylvania, and who were not alleged to conduct any business or make any contracts for services in the District of Columbia and where no injury was alleged to have been suffered in the District of Columbia, the court could not exercise jurisdiction over them. Deutsch v. United States Dep't of Justice, 881 F. Supp. 49 (D.D.C. 1995), aff'd, 93 F.3d 986 (D.C. Cir. 1996).

Court had no jurisdiction over employees of the Federal Bureau of Prisons who worked in Minnesota, where they were not alleged to conduct any business or make any contracts for services in the District of Columbia and where no injury was alleged to have been suffered in the District of Columbia. Robertson v. Merola, 895 F. Supp. 1 (D.D.C. 1995).

Where defendant resided in Minnesota, and plaintiff did not allege that defendant entered into any business transactions or contracts in the District of Columbia, nor did plaintiff allege any injury occurred in the District, there was no basis for the court to exercise personal jurisdiction over the defendant. Meyer v. Federal Bureau of Prisons, 940 F. Supp. 9 (D.D.C. 1996).

Although defendant, an Ohio resident, was hired by plaintiff's D.C. law firm to do an audit of a D.C. company, engaged in correspondence with the firm, and prepared the company's tax returns, none of these sources of contact provided long-arm jurisdiction under this section. Richter v. Analex Corp., 940 F. Supp. 353 (D.D.C. 1996).

Where the petitioner did not live in the District at the time the suit was filed, respondent was not personally served with process, and none of the conduct relating to the cause of action occurred in the District, the court did not have in personam jurisdiction under this section. L.T. v. J.C., 125 WLR 1309 (Super. Ct. 1997).

Even though the defendant publisher operated a bureau in the District and was engaged not only in the business of newsgathering but also contributed syndicated columns to 1,500 publications, the plaintiff failed to show a link between either of those activities and allegedly libelous articles published in a California newspaper for the purpose of establishing personal jurisdiction. Lohrenz v. Donnelly, 958 F. Supp. 17 (D.D.C. 1997).

III. TORTIOUS INJURY IN DISTRICT.

A. Act or Omission in District.

Telephone calls generally. — The longstanding case law in this jurisdiction, albeit binding only on the federal courts, provides that for purposes of paragraph (a)(3) of this section, an act or omission which occurs during a phone conversation is deemed to occur where the defendant is located. Etchebarne-Bourdin v. Bourdin, 124 WLR 2261 (Super. Ct. 1996).

Articles written in other jurisdiction. — Paragraph (a)(3) requires that both tortious injury and an act predicate to it take place within the District. Where defendant writer's acts were not in the District and it was undisputed that he wrote the article at issue in New York and delivered it to magazine in New York, the D.C. Circuit Court therefore had no basis for jurisdiction under paragraph (a)(3). McFarlane v. Esquire Magazine, 74 F.3d 1296 (D.C. Cir. 1996), cert denied, 519 U.S. 809, 117 S. Ct. 53, 136 L. Ed. 2d 16 (1996).

Employment within District. — In a paternity action, where the only connection with the District was the respondent's employment, but the pregnancy did not emanate from any such relationship, court lacked personal subject matter jurisdiction. T.M.P. v. G.C.M., 124 WLR 233 (Super. Ct. 1995).

Acts of agents. — Where complaint alleged actions by defendant's agents in the District of Columbia related to plaintiff's claim for intentional infliction of emotional distress, because there was no evidence that the defendant authorized, intended, or knew of the performance of these actions in the District, the exercise of personal jurisdiction would be inconsistent with due process. Jungquist v. Sheikh Sultan Bin Khalifa Al Nahyan, 115 F.3d 1020 (D.C. Cir. 1997).

B. Act or Omission Outside District.

Requirements for acquisition of jurisdiction.

In order to establish personal jurisdiction under subsection (a)(4) of this section, a plaintiff must make a prima facie showing that (1) plaintiff suffered a tortious injury in the District of Columbia; (2) the injury was caused by the defendant's act or omission outside of the District of Columbia; and (3) defendant had one of the three enumerated contacts with the District of Columbia. Blumenthal v. Drudge, 992 F. Supp. 44 (D.D.C. 1998).

Contacts sufficient for jurisdiction.

Because the advertising revenue of a communications company which operated a nationwide internet yellow pages service depended, in part, on the number of users in the District accessing its service, the defendant's alleged act of directing users away from the company's services foreseeably caused the plaintiff a tortious injury to its business in the District; thus, plaintiff sufficiently alleged a tortious injury in the District. GTE New Media Servs., Inc. v. Ameritech Corp., 21 F. Supp. 2d 27 (D.D.C. 1998).

Contacts held insufficient.

It appears unlikely that one living and working in a foreign country would be injured in the District of Columbia merely because his employer's principle place of business was located in the District, and where the plaintiff made no showing that the conduct by defendant was "purposefully directed" at the District of Columbia, the District Court lacked jurisdiction under subsection (a). El-Fadl v. Central Bank of Jordan, 75 F.3d 668 (D.C. Cir. 1996).

Actions not regularly doing business or persistent course of conduct. — If "regularly" and "persistent," in paragraph (a)(4), are to have any meaning, sale of two articles to District-based publications over a career in journalism cannot amount to "regularly" doing business or to a "persistent" course of conduct. McFarlane v. Esquire Magazine, 74 F.3d 1296 (D.C. Cir. 1996), cert denied, 519 U.S. 809, 117 S. Ct. 53, 136 L. Ed. 2d 16 (1996).

No personal jurisdiction over defendants shown where plaintiff was a Virginia resident seeking medical treatment in connection with her pregnancy from Virginia doctors at their offices in Virginia and asserting that defendants' negligent treatment, all of which occurred in Virginia, resulted in her giving birth to a stillborn child in a Virginia hospital. Etchebarne-Bourdin v. Radice, 124 WLR 2253 (Super. Ct. 1996).

Tortious acts committed "among other locations" too vague. — Where plaintiffs alleged only that the unlawful employment practices and tortious acts complained of were committed in the District of Columbia, among other locations, the "among other locations" language is far too vague and conclusory for the federal district court to invoke paragraph (a)(4). Richard v. Bell Atl. Corp., 946 F. Supp. 54 (D.D.C. 1996).

§ 13-425. Inconvenient forum.

Determinative factors.

The factors to be considered in deciding whether to dismiss for forum non conveniens comprise two categories: the private interest of the litigants, and the public interest of the forum. Smith v. Alder Branch Realty Ltd. Partnership, App. D.C., 684 A.2d 1284 (1996).

In deciding whether an action is a foreign litigation, in which the courts of this jurisdiction should take no interest, the trial court properly looked at the residence of those persons who would be most affected by a judgment, as well as the effect in the District of Columbia of the transaction underlying the action. Smith v. Alder Branch Realty Ltd. Partnership, App. D.C., 684 A.2d 1284 (1996).

Discretion of trial court. — A finding that the trial court did not abuse its discretion in granting a motion to dismiss for forum non conveniens does not necessarily mean that the trial court would have abused its discretion had it denied the same motion. Smith v. Alder Branch Realty Ltd. Partnership, App. D.C., 684 A.2d 1284 (1996).

Where plaintiff is non-resident.

A non-resident plaintiff's choice of forum is a comparatively minor factor in making forum non conveniens determinations. Eric T. v. National Medical Enters., Inc., App. D.C., 700 A.2d 749 (1997).

Burden of proof where claim arose in another jurisdiction. — Where it is shown that neither party resides in the District and the plaintiff's claim arose in another jurisdiction that has more substantial contacts with the cause of action, the burden normally allocated to the defendant to demonstrate why dismissal is warranted for forum non conveniens rests instead upon the plaintiff to show why it is not. Eric T. v. National Medical Enters., Inc., App. D.C., 700 A.2d 749 (1997).

Denial of motion to dismiss is appealable. — Court of appeals permits interlocutory appeals from orders denying a motion to dismiss for forum non conveniens. Smith v. Alder Branch Realty Ltd. Partnership, App. D.C., 684 A.2d 1284 (1996).

Motion to dismiss granted.

Where parties were residents of Maryland, the court granted respondent's motion to dismiss under this section. L.T. v. J.C., 125 WLR 1309 (Super. Ct. 1997).

District of Columbia forum upheld.

Personal injury action should not have been dismissed on the ground of forum non conveniens where, although neither of the parties where District residents, the traffic accident in question took place on one of the islands in the Potomac. Neale v. Arshad, App. D.C., 683 A.2d 160 (1996).

Appellate review. — Trial court rulings on forum non conveniens motions are entitled to receive considerable deference from the Court of Appeals; that court will not reverse such a ruling unless presented with clear evidence that the trial court abused its broad discretion. Eric T. v. National Medical Enters., Inc., App. D.C., 700 A.2d 749 (1997).

The Court of Appeals' review of rulings on forum non conveniens motions includes an independent evaluation of both private and public factors; the Court applies close scrutiny to the specific factors identified and evaluated by the trial court, and once it is satisfied that the trial court took the proper factors into account, it adopts a deferential approach. Eric T. v. National Medical Enters., Inc., App. D.C., 700 A.2d 749 (1997).

Cited in Pippin v. Potomac Electric Power Co., 126 WLR 1133 (Super. Ct. 1998).

Subchapter III. Service Outside the District of Columbia.

§ 13-431. Manner and proof of service.

Cited in Bulin v. Stein, App. D.C., 668 A.2d 810 (1995); L.T. v. J.C., 125 WLR 1309 (Super. Ct. 1997).

TITLE 14. PROOF.

CHAPTER 1. EVIDENCE GENERALLY; DEPOSITIONS.

§ 14-102. Impeachment of witnesses.

* * * * *

(b) A statement is not hearsay if the declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement and the statement is (1) inconsistent with the declarant's testimony, and was given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding, or in a deposition, or (2) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the witness of recent fabrication or improper influence or motive, or (3) an identification of a person made after perceiving the person. Such prior statements are substantive evidence. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88-241, § 1; 1973 Ed., § 14-102; May 23, 1995, D.C. Law 10-256, § 4, 42 DCR 20; Apr. 18, 1996, D.C. Law 11-110, § 23, 43 DCR 530.)

Effect of amendments. — D.C. Law 10-256 rewrote the section and the section heading preceding the text.

D.C. Law 11-110 substituted "motive, or (3) an identification" for "motive or an identification" in (b).

Legislative history of Law 10-256. — Law 10-256, the "Public Safety and Law Enforcement Support Amendment Act of 1994," was introduced in Council and assigned Bill No. 10-628, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on November 1, 1994, and December 6, 1994, respectively. Signed by the Mayor on December 27, 1994, it was assigned Act No. 10-375 and transmitted to both Houses of Congress for its review.

Legislative history of Law 11-110. — Law 11-110, the "Technical Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-485, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-199 and transmitted to both Houses of Congress for its review. D.C. Law 11-110 became effective on April 18, 1996.

Editor's notes. — D.C. Act 10-375, which affected this section as set out in the 1995 Replacement Volume, became Law 10-256, effective May 23, 1995.

D.C. Law 10-256 became effective May 23, 1995. The notes relating to D.C. Law 10-256 have been set out herein to clarify the law number and effective date of that act.

Constitutionality. — Where defendant's arrest occurred prior to the 1995 amendment of this section and the trial occurred after this section was amended, the application of the amended section during the trial, which allowed the admission of prior inconsistent statements as substantive evidence, did not violate the Ex Post Facto Clause in Art. 1, § 10 of the United States Constitution. Jones v. United States, App. D.C., 719 A.2d 92 (1998).

This section, as amended in 1995, did not criminalize behavior not previously a crime or make a punishment more burdensome. Nor did it deprive defendant of a defense by changing the ingredients of the offense or the ultimate facts necessary to establish guilt. Thus, its retroactive application during trial did not violate the Ex Post Facto Clause. Jones v. United States, App. D.C., 719 A.2d 92 (1998).

Where prior inconsistent testimony by defendant bore directly on the critical issue of whether the defendant was in position to commit the alleged crime, and the prosecutor in rebuttal had characterized the inconsistencies as innocent confusion on the part of the witness, and where the jury specifically requested to see the transcripts, judgment against defendant must be reversed. Williams v. United States, App. D.C., 686 A.2d 552 (1996).

Admissibility of prior inconsistent statements as substantive evidence. — Under this section as amended in 1995, certain prior inconsistent statements by witness are admissible as substantive evidence. Jones v. United States, App. D.C., 719 A.2d 92 (1998).

This section was amended in 1995 so that prior inconsistent statements, given under oath, may be considered by the jury as substantive evidence. Green v. United States, App. D.C., 718 A.2d 1042 (1998).

Adoption of prior inconsistent statements. (decision prior to 1995 amendment).

In accord with second paragraph in bound volume. Sterling v. United States, App. D.C., 691 A.2d 126 (1997).

But reversal not warranted where court gave limiting instruction. — Reversal was not warranted where even though the trial court failed to give an immediate cautionary instruction at the time of impeachment, it did give a limiting instruction in its final charge. Sterling v. United States, App. D.C., 691 A.2d 126 (1997).

Impeachment proper.

Where the government witness's testimony at trial provided an unanticipated alibi and contradicted directly the testimony of two other government witnesses, the trial court properly allowed the government to impeach its witness. Sterling v. United States, App. D.C., 691 A.2d 126 (1997).

Scope of appellate review. (decision prior to 1995 amendment).

In accord with second paragraph in bound volume. Sterling v. United States, App. D.C., 691 A.2d 126 (1997).

Cited in Twyman v. Johnson, App. D.C., 655 A.2d 850 (1995); Scales v. United States, App. D.C., 687 A.2d 927 (1996); Gilliam v. United States, App. D.C., 707 A.2d 784 (1998).

§ 14-103. Depositions for use in State and Territorial Courts.

Jurisdiction. — Given that the Court Reform Act withdrew from the United States District Court for the District of Columbia its general jurisdiction over most local matters, it appears unlikely that Congress intended this section to confer upon the United States District Court for the District of Columbia subject matter jurisdiction that other federal district courts lack; rather, it is far more likely that this section merely specifies the procedures that formerly applied when the federal district court had jurisdiction. Houston Bus. Journal, Inc. v. Office of the Comptroller, 86 F.3d 1208 (D.C. Cir. 1996).

CHAPTER 3. COMPETENCY OF WITNESSES.

§ 14-305. Competency of witnesses; impeachment by evidence of conviction of crime.

Specificity required. — This section mandates that, upon request, the government be allowed to specify a specific prior conviction in impeaching a witness; it leaves no discretion to the trial court to use less specific language such as the term "serious felony." Wilson v. United States, App. D.C., 691 A.2d 1157 (1997).

Prior conviction for possession of narcotics involves dishonesty or false statement, etc.

In criminal prosecution for assaulting a police officer with a dangerous weapon, trial court did not err in permitting the prosecutor to impeach defendant with prior conviction for possession of marijuana since possessory crimes involve dishonesty or false statement within the meaning of this section. Holt v. United States, App. D.C., 675 A.2d 474 (1996), cert. denied, 519 U.S. 866, 117 S. Ct. 176, 136 L. Ed. 2d 117 (1996).

Prior conviction of conspiracy to counterfeit or alter currency could be used to impeach witness where the conviction was within the time limits of subsection (b) of this section and where the conviction also involved dishonesty or false statements. Molovinsky v. Fair Emp. Council of Greater Wash., Inc., App. D.C., 683 A.2d 142 (1996).

Conviction stemming from summary court-martial proceeding. — Because a conviction stemming from a summary court-martial proceeding lacks the trustworthiness of a conviction resulting from more formal and adversarial criminal proceedings, it cannot be used for impeachment purposes under this section. Zellers v. United States, App. D.C., 682 A.2d 1118 (1996).

Cited in Bailey v. United States, App. D.C., 699 A.2d 392 (1997).

§ 14-306. Husband and wife.

Marriage entered into to preclude spouse from testifying. — This section does not allow a trial court to compel a wife to testify against her husband even if marriage was entered into to preclude the wife from testifying or because of alleged complicity in the charged crime. United States v. Washington, 125 WLR 1185 (Super. Ct. 1185).

Privilege belongs only to witness spouse.

Defendant's failure to object to questioning of common-law wife at trial after she said she did not want to testify by raising marital privilege did not constitute a waiver of allegation of error on appeal since the privilege belongs only to the witness spouse, so that matter on appeal is impact of statutory violation on fairness of defendant's trial. Bowler v. United States, App. D.C., 480 A.2d 678 (1984).

TITLE 15. JUDGMENTS AND EXECUTIONS; FEES AND COSTS.

CHAPTER 1. JUDGMENTS AND DECREES.

§ 15-102. Lien of judgment, decree, or forfeited recognizance.

* * * * *

(c) This section shall not apply to any property that is owned by the District government or by any independent agency or instrumentality of the District government, nor to any property in which the District government or any independent agency or instrumentality of the District government has an interest, to the extent of that interest. (Dec. 23, 1963, 77 Stat. 523, Pub. L. 88-241, § 1; Nov. 2, 1966, 80 Stat. 1177, Pub. L. 89-745, §§ 2, 7; Mar. 11, 1968, 82 Stat. 42, Pub. L. 90-263, § 2; July 29, 1970, 84 Stat. 553, Pub. L. 91-358, title I, § 144(2); 1973 Ed., § 15-102; June 6, 1996, D.C. Law 11-136, § 2, 43 DCR 2127.)

Effect of amendments. — D.C. Law 11-136 added (c).

Temporary amendment of section. — Section 2 of D.C. Law 11-108 added (c).

Section 3 of D.C. Law 11-108 provided that subsection (c) of § 15-102 shall be fully retroactive. Section 3 of D.C. Law 11-108, also provided that the Recorder of Deeds of the District of Columbia shall forthwith cause to be released from the records under his or her control all liens against property that is owned by the District government or by any independent agency or instrumentality of the District government, or in which the District government or any independent agency or instrumentality of the District government has an interest, to the extent of that interest.

Section 5(b) of D.C. Law 11-108 provided that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 2 of the Property Lien Emergency Amendment Act of 1995 (D.C. Act 11-168, December 8, 1995, 42 DCR 7067) and § 2 of the Property Lien Congressional Review Emergency Amendment Act of 1996 (D.C. Act 11-224, March 7, 1996, 43 DCR 1420).

Section 3 of D.C. Act 11-168 and § 3 of D.C. Act 11-224 provided for the retroactivity of the amendment by § 2 of the act.

Legislative history of Law 11-108. — Law 11-108, the "Property Lien Temporary Amendment Act of 1996," was introduced in Council and assigned Bill No. 11-507. The Bill was adopted on first and second readings on December 5, 1995, and January 4, 1996, respectively. Signed by the Mayor on January 26, 1996, it was assigned Act No. 11-200 and transmitted to both Houses of Congress for its review. D.C. Law 11-108 became effective on April 12, 1996.

Legislative history of Law 11-136. — Law 11-136, the "Judgment Lien on Property Amendment Act of 1996," was introduced in Council and Assigned Bill No. 11-508, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on March 5, 1996, and April 2, 1996, respectively. Signed by the Mayor on April 11, 1996, it was assigned Act No. 11-248 and transmitted to both Houses of Congress for its review. D. C. Law 11-136 became effective on June 6, 1996.

Retroactivity of D.C. Law 11-136. — Section 3 of D.C. Law 11-136 provided that § 2 of the act "shall be fully retroactive. The Recorder

of Deeds of the District of Columbia shall forthwith cause to be released, from the records under the control of the Recorder of Deeds, all judgment liens against property that is owned by the District government or by any independent agency or instrumentality of the District government, or property in which the District government or any independent agency or instrumentality of the District government has an interest, to the extent of that interest."

§ 15-108. Interest on judgment for liquidated debt.

Timing of request for interest, etc.

Attorney who was expelled from law firm was entitled to prejudgment interest, notwithstanding the fact that he did not make a timely demand for termination pay, because the amount due him was a liquidated debt, and thus the issue was governed by this section. Spriggs v. Bode, App. D.C., 691 A.2d 139 (1997).

Collective bargaining agreements. — The trial court erred by submitting to the jury the issue of whether compound interest should be added to employees' award in a collective bargaining dispute, where there was no contractual provision in the collective bargaining agreement allowing for compound interest. Rastall v. CSX Transp., Inc., App. D.C., 697 A.2d 46 (1997).

Cited in Credit Lyonnais-New York v. Washington Strategic Consulting Group, Inc., 886 F. Supp. 92 (D.D.C. 1995); National Union Fire Ins. Co. v. Riggs Nat'l Bank, 93 F.3d 885 (D.C. Cir. 1996).

§ 15-109. Interest on judgment for damages in contract or tort.

Prejudgment interest.

The Superior Court is empowered to award prejudgment interest if such an award is necessary to "fully compensate the plaintiff"; and is often an element of complete compensation where a plaintiff has been deprived of the use of money withheld. Potomac Residence Club v. Western World Ins. Co., App. D.C., 711 A.2d 1228 (1998).

Prejudgment interest awarded. — Architecture firm held entitled to an award of prejudgment interest as an element of its damages. Shalom Baranes Assoc. v. 900 F St. Corp., 940 F. Supp. 1 (D.D.C. 1996).

Termination pay was liquidated debt. — Attorney who was expelled from law firm was entitled to prejudgment interest, notwithstanding the fact that he did not make a timely demand for termination pay, because the amount due him was a liquidated debt, and thus the issue was governed by § 15-108, not this section. Spriggs v. Bode, App. D.C., 691 A.2d 139 (1997).

CHAPTER 3. ENFORCEMENT OF JUDGMENTS AND DECREES.

Subchapter III. Uniform Foreign-money Judgments.

Subchapter I. Local Judgments and Decrees.

§ 15-316. Subrogation of purchaser after defective sale; no refund.

Cited in Voytsechovska v. Albert, 126 WLR 849 (Super. Ct. 1998).

§ 15-322. Enforcement of decrees for delivery of chattels.

Cited in Voytsechovska v. Albert, 126 WLR 849 (Super. Ct. 1998).

Subchapter II. Foreign Judgments.

§ 15-351. Definitions.

Cited in Allied Capital Lending Corp. v. Stubbs, 123 WLR 389 (Super. Ct. 1995).

§ 15-354. Stay.

Cited in Allied Capital Lending Corp. v. Stubbs, 123 WLR 389 (Super. Ct. 1995).

Subchapter III. Uniform Foreign-money Judgments.

§ 15-381. Definitions.

For the purposes of this act, the term:

(1) "Foreign state" means any governmental unit other than the United States, or any state, the District of Columbia, or any territory or insular possession of the United States.

(2) "Foreign-money judgment" means any judgment of a foreign state granting or denying recovery of a sum of money, other than a judgment for taxes, a fine or other penalty, or a judgment for support in matrimonial or family matters. (Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787.)

Legislative history of Law 11-84. — Law 11-84, the "Uniform Foreign Money Judgments Recognition Act of 1995," was introduced in Council and assigned Bill No. 11-229, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 28, 1995, it was assigned Act No. 11-163 and transmitted to both Houses of Congress for its review. D.C. Law 11-84 became effective on February 10, 1996.

References in text. — The reference to "this act" which appears in the introductory language of this section, is to D.C. Law 11-84 which is codified as §§ 15-381 to 15-388.

§ 15-382. Recognition and enforcement.

Except as provided in section 15-383, a foreign-money judgment meeting the requirements of section 15-387 is conclusive between the parties to the extent that it grants or denies recovery of a sum of money. The foreign-money judgment is enforceable in the same manner as the judgment of a sister jurisdiction which is entitled to full faith and credit. (Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787.)

Legislative history of Law 11-84. — See note to § 15-381.

§ 15-383. Grounds for nonrecognition.

(a) A foreign-money judgment is not conclusive if:

(1) The judgment was rendered under a system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) The foreign court did not have personal jurisdiction over the defendant; or

(3) The foreign court did not have jurisdiction over the subject matter.

(b) A foreign-money judgment need not be recognized if:

(1) The defendant in the proceedings in the foreign court did not receive notice of the proceedings in sufficient time to enable the defendant to defend;

(2) The judgment was obtained by fraud;

(3) The cause of action on which the judgment is based is repugnant to the public policy of the District of Columbia;

(4) The judgment conflicts with another final and conclusive judgment;

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be settled otherwise than by proceedings in that court; or

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action. (Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787.)

Legislative history of Law 11-84. — See note to § 15-381.

Section references. — This section is referred to in § 15-382.

§ 15-384. Personal jurisdiction.

(a) A foreign-money judgment shall not be refused recognition for lack of personal jurisdiction if:

(1) The defendant was served personally in the foreign state;

(2) The defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over the defendant;

(3) The defendant, prior to the commencement of the proceedings, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) The defendant was domiciled in the foreign state when the proceedings were instituted, or, being a body corporate, had its principal place of business, was incorporated, or had otherwise acquired corporate status in the foreign state;

(5) The defendant had a business office in the foreign state and the proceedings in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign state; or

(6) The defendant operated a motor vehicle or airplane in the foreign state and the proceedings involved a cause of action arising out of such operation.

(b) The courts of the District of Columbia may recognize other bases of jurisdiction. (Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787.)

Legislative history of Law 11-84. — See note to § 15-381.

§ 15-385. Stay in cases of appeal.

If the defendant satisfies the court that either an appeal is pending or the defendant is entitled and intends to appeal from the foreign-money judgment, the court may stay the proceedings until the appeal has been determined or until the expiration of a period of time sufficient to enable the defendant to prosecute the appeal. (Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787.)

Legislative history of Law 11-84. — See note to § 15-381.

§ 15-386. Savings clause.

This act does not prevent the recognition of a foreign-money judgment in situations not covered by this act. (Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787.)

Legislative history of Law 11-84. — See note to § 15-381.

References in text. — The references to "this act" which appear in this section are to D.C. Law 11-84 which is codified as §§ 15-381 to 15-388.

§ 15-387. Applicability.

This act applies to any foreign-money judgment that is final and conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal. (Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787.)

Legislative history of Law 11-84. — See note to § 15-381.

References in text. — The reference to "this act" which appear in this section is to D.C. Law 11-84 which is codified as §§ 15-381 to 15-388.

§ 15-388. Uniformity of application and construction.

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it. (Feb. 10, 1996, D.C. Law 11-84, § 2, 42 DCR 6787.)

Legislative history of Law 11-84. — See note to § 15-381.

References in text. — The references to "this act" which appear in this section are to D.C. Law 11-84 which is codified as §§ 15-381 to 15-388.

CHAPTER 7. FEES AND COSTS.

Sec.
15-712. Proceedings in Forma Pauperis.

§ 15-712. Proceedings in Forma Pauperis.

(a) Any District of Columbia court may authorize the commencement, prosecution or defense of any noncriminal suit, action or proceeding, or appeal therein, without prepayment of fees and costs or security therefor, including

the fees for transcripts on appeal, by a person who is unable to pay such costs or give security therefor without substantial hardship to himself or herself or his or her family, as established by affidavit or other proof satisfactory to the court.

(b) Any person who makes an affidavit as provided in subsection (a) of this section and states therein that he or she receives public assistance under the District of Columbia Temporary Assistance for Needy Families, Program on Work, Employment, and Responsibility or General Assistance for Children programs, or receives assistance under Title XVI of the Social Security Act (Supplemental Security Income) (76 Stat. 197) shall be presumed eligible to proceed without prepayment of fees and costs or security therefor. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88-241, § 1; July 29, 1970, 84 Stat. 554, Pub. L. 91-358, title I, § 144(14); 1973 Ed., § 15-712; Apr. 7, 1977, D.C. Law 1-107, title II, § 202, 23 DCR 8737; Mar. 20, 1998, D.C. Law 12-60, § 703, 44 DCR 7378; Apr. 20, 1999, D.C. Law 12-241, § 8, 46 DCR 905; Apr. 20, 1999, D.C. Law 12-264, § 24, 46 DCR 2118.)

Effect of amendments. — D.C. Law 12-60, in (b), substituted "General Assistance for Children" for "General Public Assistance."

D.C. Law 12-241 substituted "Temporary Assistance for Needy Families, Program on Work, Employment, and Responsibility" for "Aid to Families with Dependent Children" in (b).

D.C. Law 12-264, in (a), substituted "non-criminal" for "non-criminal"; and in (b), substituted "subsection (a) of this section" for "subsection (a)," and validated a previously made technical correction.

Temporary amendments of section. — Section 4 of D.C. Law 12-21 substituted "General Assistance for Children Programs" for "General Public Assistance Programs" in (b).

Section 8(b) of D.C. Law 12-21 provided that the act shall expire on the 225th day of its having taken effect.

D.C. Law 12-59, in (b), substituted "General Assistance for Children" for "General Public Assistance."

Section 2001(b) of D.C. Law 12-59 provided that the act shall expire after 225 days of its having taken effect.

Section 2002 of D.C. Law 12-59 provided that the act shall apply as of October 1, 1997.

Section 8 of D.C. Law 12-230 substituted "Temporary Assistance for Needy Families, Program on Work, Employment, and Responsibility" for "Aid to Families with Dependent Children" in (b).

Section 18(b) of D.C. Law 12-230 provides that the act shall expire after 225 days of its having taken effect.

Emergency act amendments. — For temporary amendment of section, see § 4 of the General Public Assistance Program Termination Emergency Amendment Act of 1997 (D.C. Act 12-72, May 12, 1997, 44 DCR 2989).

Section 7 of D.C. Act 12-72 provides for the application of the act.

For temporary amendment of section, see § 703 of the Fiscal Year 1998 Revised Budget Support Emergency Act of 1997 (D.C. Act 12-152, October 17, 1997, 44 DCR 6196); and § 703 of the Fiscal Year 1998 Revised Budget Support Congressional Review Emergency Act of 1997 (D.C. Act 12-239, January 13, 1998, 45 DCR 508).

Section 2002 of D.C. Act 12-152 provides for the application of the act.

For temporary amendment of section, see § 8 of the Self-Sufficiency Promotion Emergency Amendment Act of 1998 (D.C. Act 12-372, June 9, 1998, 45 DCR 4270), § 8 of the Self-Sufficiency Promotion Legislative Review Emergency Amendment Act of 1998 (D.C. Act 12-425, July 31, 1998, 45 DCR 5682), § 8 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1998 (D.C. Act 12-552, December 24, 1998, 46 DCR 521), and § 8 of the Self-Sufficiency Promotion Congressional Review Emergency Amendment Act of 1999 (D.C. Act 13-19, February 17, 1999, 46 DCR 2492)

Section 17 of D.C. Act 12-552 provides for the retroactive application of the act.

Section 18 of D.C. Act 13-19 provides for the retroactive application of the act.

Legislative history of Law 12-21. — Law 12-21, the "General Public Assistance Program Termination Temporary Amendment Act of 1997," was introduced in Council and assigned Bill No. 12-169. The Bill was adopted on first and second readings on May 6, 1997, and June 3, 1997, respectively. Signed by the Mayor on June 18, 1997, it was assigned Act No. 12-98 and transmitted to both Houses of Congress for its review. D.C. Law 12-21 became effective on September 23, 1997.

Legislative history of Law 12-59. — Law 12-59, the "Fiscal Year 1998 Revised Budget Support Temporary Act of 1997," was introduced in Council and assigned Bill No. 12-350. The Bill was adopted on first and second read-

ings on September 8, 1997, and September 22, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-190 and transmitted to both Houses of Congress for its review. D.C. Law 12-59 became effective on March 20, 1998.

Legislative history of Law 12-60. — Law 12-60, the "Fiscal Year 1998 Revised Budget Support Act of 1997," was introduced in Council and assigned Bill No. 12-353, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on September 22, 1997, and October 7, 1997, respectively. Signed by the Mayor on October 24, 1997, it was assigned Act No. 12-191 and transmitted to both Houses of Congress for its review. D.C. Law 12-60 became effective on March 20, 1998.

Legislative history of Law 12-230. — Law 12-230, the "Self-Sufficiency Promotion Temporary Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-557. The Bill was adopted on first and second readings on May 5, 1998, and July 30, 1998, respectively. Signed by the Mayor on August 18, 1998, it was assigned Act No. 12-443 and transmitted to both Houses of Congress for its review. D.C. Law 12-230 became effective on April 20, 1999.

Legislative history of Law 12-241. — Law 12-241, the "Self-Sufficiency Promotion Amendment Act of 1998," was introduced in Council and assigned Bill No. 12-558, which was referred to the Committee on Human Services. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on December 23, 1998, it was assigned Act No. 12-573 and transmitted to both Houses of Congress for its review. D.C. Law 12-241 became effective on April 20, 1999.

Legislative history of Law 12-264. — Law 12-264, the "Technical Amendments Act of 1998," was introduced in Council and assigned Bill No. 12-804, which was referred to the Committee of the Whole. The Bill was adopted on first and second readings on November 10, 1998, and December 1, 1998, respectively. Signed by the Mayor on January 7, 1999, it was assigned Act No. 12-626 and transmitted to both Houses of Congress for its review. D.C. Law 12-264 became effective on April 20, 1999.

Application of Law 12-60. — Section 2002 of D.C. Law 12-60 provided that the act shall apply as of October 1, 1997.

§ 15-714. Witness fees for attendance in Superior Court.

Cited in Talley v. Varma, App. D.C., 689 A.2d 547 (1997).

CHAPTER 9. UNIFORM FOREIGN-MONEY CLAIMS.

§ 15-901. Definitions.

For the purposes of this act, the term:

(1) "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

(2) "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.

(3) "Conversion date" means the banking day next preceding the date on which money, in accordance with this act, is:

(A) Paid to a claimant in an action or distribution proceeding;

(B) Paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or

(C) Used to recoup, set off, or counterclaim in different moneys in an action or distribution proceeding.

(4) "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which one or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity, and the distribution of an estate, trust, or other fund.

(5) "Foreign money" means money other than money of the United States of America.

(6) "Foreign-money claim" means a claim upon an obligation to pay, or a claim for recovery of a loss, expressed in, or measured by, a foreign money.

(7) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by an intergovernmental agreement.

(8) "Money of the claim" means the money determined as proper pursuant to section 15-904.

(9) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, joint venture, partnership, association, 2 or more persons having a joint or common trust, or any other legal or commercial entity.

(10) "Rate of exchange" means the rate at which money of one country may be converted into money of another country in a free financial market convenient to, or reasonably usable by, a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transactions giving rise to the foreign-money claim.

(11) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next day availability or for settlement by immediate payment in cash or equivalent, by charge to an account, or by an agreed delayed settlement not exceeding 2 days.

(12) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States. (Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Legislative history of Law 11-85. — Law 11-85, the "Uniform Foreign Money Claims Act of 1995," was introduced in Council and assigned Bill No. 11-230, which was referred to the Committee on the Judiciary. The Bill was adopted on first and second readings on October 10, 1995, and November 7, 1995, respectively. Signed by the Mayor on November 28, 1995, it was assigned Act No. 11-164 and transmitted to both Houses of Congress for its review. D.C. Law 11-85 became effective on February 10, 1996.

References in text. — The references to "this act," which appear in the introductory language and (3), are to D.C. Law 11-85 which is codified as §§ 15-901 to 15-914.

§ 15-902. Variation by agreement.

(a) The effect of this act may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

(b) Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for one aspect of a transaction does not alone require the use of that money for other aspects of the transaction. (Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Legislative history of Law 11-85. — See note to § 15-901.

References in text. — The reference to "this act," which appears in (a), is to D.C. Law 11-85 which is codified as §§ 15-901 to 15-914.

§ 15-903. Determining money of the claim.

(a) The money in which the parties to a transaction have agreed that payment is to be made, is the proper money of the claim for payment.

(b) If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

(1) Regularly used between the parties as a matter of usage or course of dealing;

(2) Used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

(3) In which the loss was ultimately felt or will be incurred by the party claimant. (Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Legislative history of Law 11-85. — See note to § 15-901.

§ 15-904. Determining amount of the money of certain contract claims.

(a) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

(b) If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding 30 days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(c) A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly. (Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Legislative history of Law 11-85. — See note to § 15-901.

Section references. — This section is referred to in §§ 15-901 and 15-906.

§ 15-905. Asserting and defending a foreign-money claim.

(a) A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.

(b) An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.

(c) A person may assert a defense, set-off, recoupment, or counterclaim in any money without regard to the money of other claims.

(d) The determination of the proper money of the claim is a question of law. (Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Legislative history of Law 11-85. — See note to § 15-901.

§ 15-906. Judgments and awards on foreign-money claims; times of money conversion; form of judgment.

(a) Except as provided in subsection (c) of this section, a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim.

(b) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

(c) Assessed costs must be entered in United States dollars.

(d) Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for the payment.

(e) A judgment or award made in an action or distribution proceeding on both a defense, set-off, recoupment, or counterclaim and the adverse party's claim, must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger, and specifying the rates of exchange used.

(f) A judgment substantially in the following from [form] complies with subsection (a) of this section:

"IT IS ADJUDGED AND ORDERED, that Defendant (insert name) pay to Plaintiff (insert name) the sum of (insert amount in the foreign money) plus interest on that sum at the rate of interest pursuant to section 15-908 or, at the option of the judgment debtor, the number of United States dollars which will purchase the (insert name of foreign money) with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount) United States dollars.".

(g) If a contract claim is of the type covered by section 15-904(a) or (b), the judgment or award must be entered for the amount of money stated to measure

the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars which will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(h) A judgment must be filed and indexed in foreign money in the same manner as other judgments and has the same effect as a lien. It may be discharged by payment. (Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Legislative history of Law 11-85. — See note to § 15-901.

§ 15-907. Conversions of foreign money in distribution proceeding.

The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated. (Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Legislative history of Law 11-85. — See note to § 15-901.

Section references. — This section is referred to in § 15-909.

§ 15-908. Prejudgment and judgment interest.

(a) With respect to a foreign-money claim, recovery of prejudgment or pre-award interest and the rate of interest to be applied in the action or distribution proceeding, except as provided in subsection (b) of this section, are matters of the substantive law governing the right to recovery under the conflict of laws rules of the District.

(b) The court or arbitrator shall increase or decrease the amount of prejudgment or pre-award interest otherwise payable in a judgment or award in foreign money to the extent required by the law of the District governing a failure to make or accept an offer of settlement or an offer of judgment, or to the extent required by the law of the District governing conduct by a party or its attorney causing undue delay or expense.

(c) A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of the District. (Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Legislative history of Law 11-85. — See note to § 15-901.

Section references. — This section is referred to in § 15-906.

§ 15-909. Enforcement of foreign judgments.

(a) If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in the District as enforceable, the enforcing judgment must be entered as provided in section 15-907, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

(b) A foreign judgment may be filed in accordance with any rule or statute of the District providing a procedure for its recognition and enforcement.

(c) A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in the District.

(d) A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in the District in United States dollars only. (Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Legislative history of Law 11-85. — See note to § 15-901.

§ 15-910. Determining United States dollar value of foreign-money claims for limited purposes.

(a) Computations under this section are for the limited purposes of this section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

(b) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution, or other legal process, the amount of United States dollars at issue for assessing costs, or the amount of United States dollars involved for a surety bond or other court-required undertaking, must be ascertained as provided in subsections (c) and (d) of this section.

(c) A party seeking process, costs, bond, or other undertaking under subsection (b) of this section shall compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs, or an application for a bond or other court-required undertaking.

(d) A party seeking the process, costs, bond, or other undertaking under subsection (b) of this section shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained, and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate. (Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Legislative history of Law 11-85. — See note to § 15-901.

§ 15-911. Effect of currency revalorization.

(a) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(b) If substitution under subsection (a) of this section occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money. (Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Legislative history of Law 11-85. — See note to § 15-901.

§ 15-912. Supplementary general principles of law.

Unless displaced by particular provisions of this act, the principles of law and equity, including the law merchant, and the laws relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes supplement the provisions of this act. (Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Legislative history of Law 11-85. — See note to § 15-901.

References in text. — The references to "this act," which appear in this section, are to D.C. Law 11-85 which is codified as §§ 15-901 to 15-914.

§ 15-913. Applicability.

(a) This act applies only to a foreign-money claim in an action or distribution proceeding.

(b) This act applies to foreign money issues even if other law, under the conflict of laws rules of the District of Columbia, applies to other issues in the action or distribution proceeding. (Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Legislative history of Law 11-85. — See note to § 15-901.

References in text. — The references to "this act," which appear in this section, are to D.C. Law 11-85 which is codified as §§ 15-901 to 15-914.

§ 15-914. Uniformity of application and construction.

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting similar legislation. (Feb. 10, 1996, D.C. Law 11-85, § 2, 42 DCR 6791.)

Legislative history of Law 11-85. — See note to § 15-901.

References in text. — The references to "this act," which appear in this section, are to D.C. Law 11-85 which is codified as §§ 15-901 to 15-914.